

Senate Commerce & Human Resources Committee

Minutes
2008



MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 10, 2008

TIME: 1:30 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

CONVENED: The meeting was called to order by **Chairman Andreason** at 1:30 p.m.

WELCOME: **Chairman Andreason** asked **Carol Deis**, Committee Secretary, to introduce herself to the committee members.

MINUTES: **Chairman Andreason** welcomed **Bob Fick, Legislative Liaison, Department of Labor**, to address the committee regarding RS17405C1, RS17374 and RS17378C1.

RS17405C1 **Relating to the Employment Security Law**

This legislation is essentially a housekeeping bill to the Unemployment Insurance Law and it makes four changes. 1) Clarifying in the case of farm labor that the farm labor contractor is the person responsible and considered the covered employer. 2) Clarifying that even if a covered worker earns sufficient wages to be considered covered for the purposes of unemployment insurance, but those wages come from multiple employers none of who would be considered a covered employer, that they would not be eligible for unemployment insurance; covered wages would have to come from a covered employer. 3) Eliminating an outdated portion of the unemployment insurance law in connection with state unemployment tax in the case of circumstances in which a company transfers all its employees to a different company, by name only, in an attempt to shed its high unemployment tax rate. 4) Determining unemployment insurance fraud collusion between both the employer and the employee which can be determined based on induced, solicited or coerced attempts to claim false benefits.

MOTION: **Senator Werk** made a motion, seconded by **Senator Bilyeu**, that **RS17405C1** be sent to print. The motion carried with a **Voice Vote**.

RS17374 **Relating to the Department of Labor**

This legislation places in law the existence of the Career Information System and locates it within the Department of Labor. This system was moved from Professional Technical Education to the Labor Department

last fall under executive order. This system provides information linking education with careers.

MOTION:

Senator Davis made a motion, seconded by **Senator Bilyeu**, that **RS17374** be sent to print. The motion carried with a **Voice Vote**.

RS17378C1

Relating to the Employment Security Law

This legislation will bring the state into federal compliance. It has two parts and brings state law into compliance with federal directives for tracking the use of confidential information that the department provides to specific third parties. The second part requires that unemployment insurance claimants, who are participating in job training, have to be able and available for that training just as those seeking work have to be able and available for work to continue to collect their unemployment benefits.

Mr. Fick responded to questions from **Senator Davis** regarding the proposed legislation and specifically referred to the CFR. We are going to codify a specific CFR unless the federal government changes that CFR without our knowledge of consent we have effectively modified our statute, that troubles me. **Mr. Fick** responded that essentially **Senator Davis** is correct. **Mr. Fick** will get staff to provide some assurance. **Senator Coiner** questioned whether this RS should be placed on hold until staff could clarify the CFR question. **Chairman Andreason** asked **Mr. Fick** if the committee were to defer this RS, it may come back to us in an amended version and that would be to your advantage. **Mr. Fick** responded that the department is ready to handle this however the committee requests they proceed. **Chairman Andreason** would like the RS to be represented in an amended form.

RS17354

Relating to Insurance

Chairman Andreason stated that he had a discussion with **Director Deal, Department of Insurance**, this morning concerning RS17354 and asked him to rework this RS.

Chairman Andreason welcomed **Jeanne Jackson-Heim, Executive Director, of the Real Estate Commission**, to address the committee regarding RS17365 and RS17368.

RS17365

Relating to Real Estate

Ms. Jackson-Heim stated the Commission is asking your approval for two proposed pieces of legislation. The first is RS 17365, agency's annual update legislation. The second, RS 17368, proposes changes pertaining to licensee's education requirements.

RS17365, proposes an addition of a definition for "business day" for license law. The second is a date change to update the definition of the Real Estate Settlement Procedures Act. The final change in our legislation involves the codification of the Commission's educational certification fees within the fee section of the license law (54-2020)

Senator Stegner questioned their authority to set some fees for instance: 1) 54-2020 allows a not to exceed fee and then you have

additional list fees and those appear to be very specific. You should try to make it easy for individuals who are looking up what the specific fees will be to make the information consistent so they don't have to jump back between statute and rule. Ms. Jackson-Heim clarified they changed the fees section so all the application fees would be not to exceed amounts and specifically granting the commission the authority to lower the fees by rule. We had to establish the rules to put those fees in place, we put the education fees in as exact amounts so that we would be able to go in, establish the rule, and then make things more consistent.

MOTION: **Senator Davis** made a motion, seconded by **Senator Stegner**, that **RS17365** be sent to print. The motion carried with a **Voice Vote**.

RS17368 **Relating to Real Estate**

Ms. Jackson-Heim said this legislation requests the period to accept prelicense education be reduced from five years to three years. Second, to add language to clarify the Commission's responsibility to determine whether a licensee's continuing education fits within the approved topic areas. Final change being the requirement added for certified instructors to adhere to the minimum teaching standards of the Commission.

MOTION: **Senator Cameron** made a motion, seconded by **Vice Chairman Coiner**, that **RS17368** be sent to print. The motion carried with a **Voice Vote**.

Chairman Andreason welcomed **Vicki Tokita, Human Resource Program Manager**, to address the committee regarding RS17386C2 and RS17392C1.

RS17386C2 **Relating to Rules of the Division of Human Resources and the Personnel Commission**

This legislation requests new specific language for moving expense reimbursement.

Senator Cameron asked for clarification of Senate Bill 1363 requiring that the Division of Human Resources be responsible for writing rules to cover moving expenses. **Senator Stegner** stated this Senate Bill was put in place as a result of an interim committee that worked on human resources over the course of a summer. The committee specifically wanted some latitude in moving expenses so that state new hires could be competitive in enticing qualified personnel to the State of Idaho without having to go through the cumbersome process of having the Board of Examiners approve moving expenses. Now I think you are trying to reverse that ruling that the legislature purposely put in place just last year.

Ms. Tokita responded that this was correct. In 67-5337 exceptions to the maximum moving expense reimbursement may be granted if approved in advance by the department director.

MOTION: **Senator Davis** made a motion, seconded by **Senator Cameron**, that **RS17386C2** be sent to print on the condition that **Chairman Andreason** receives a statement of purpose that is rewritten changing Article 6 to Article 4.

SUBSTITUTE

MOTION: **Senator Coiner** made a substitute motion, seconded by **Senator Cameron**, to return the RS to the sponsor and bring it back before the committee with the appropriate corrections and then it could be sent to print. The motion passed with a **Roll Call Vote** (see attachment B).

RS17392C1 **Relating to State Employees**

This legislation language addresses how the state manages compensatory time balances for newly appointed employees to executive level positions. This would be for bureau chiefs and above.

MOTION: **Senator Cameron** made a motion, seconded by **Senator Werk**, that RS17392C1 be sent to print. The motion carried with a **Voice Vote**.

Chairman Andreason welcomed **Marilyn Chastain, Securities Bureau Chief**, to address the committee regarding RS17329, RS17353 and RS17360.

Senator Cameron stated that he needed to recuse himself from the vote because he is a registered representative licensed with series 6 and 63 in this state and this would be a potential conflict of interest.

RS17329 **Relating to the Uniform Securities Act**

This legislation is intended to correct and update statutory language.

RS17353 **Relating to the Uniform Securities Act**

This legislation is intended to allow the Department of Finance to seek to recover its investigative and legal costs when it brings a civil securities lawsuit.

RS17360 **Relating to the Uniform Securities Act**

This legislation amends the authority of the Department of Finance to review the books and records of broker-dealer agents and investment adviser representatives.

MOTION: **Senator Davis** made a motion, seconded by **Senator Broadsword** that RS17329, RS17353 and RS17360 be sent to print. The motion carried with a **Voice Vote**.

ADJOURNMENT: **Chairman Andreason** adjourned the meeting at 2:35 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

NOTE: Any sign-in sheets, quests lists, and/or testimony, booklets, charts and graphs, will be retained in the Committee Secretary's Office until the end of session, then will be on file with the minutes in the Legislative Services Library.

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 17, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senators Cameron & Stegner

GUESTS: See attached sign-in sheet.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:31 p.m.

Chairman Andreason welcomed **Bob Fick, Legislative Liason, Department of Labor**, to address the committee regarding RS17378C2.

RS17378C2 Relating to the Employment Security Law

Mr. Fick stated that when the original RS was presented to the Committee a week ago, Senator Davis requested that a reference to a SFR be removed from the document on the first page; the rest of the bill remains unchanged. This legislation requires unemployment benefit claimants who are in training to certify they have attended the training and are able and available for work. The second section brings the department into compliance with Federal confidentiality requirements disclosure of unemployment insurance information.

MOTION: **Senator Werk** made a motion, seconded by **Senator Biliyeu**, that **RS17378C2** be sent to print. The motion carried with a **Voice Vote**.

Chairman Andreason turned the meeting over to **Vice Chairman Coiner** for Rules Review.

Vice Chairman Coiner recognized **Bob Fick**, to present Pending Rule Dockets No. 09-0106-0701, 09-0130-0701 and 09-0201-0701.

DOCKET NO. Rules of Appeals Bureau

09-0106-0701

This rule simply removes on page 73, in 05, the word "tape" so the Appeals Bureau can use CD's instead of tape recordings and this will save them about \$5,000 per year.

MOTION: **Senator Werk** made a motion, seconded by **Senator Broadsword**, to approve Pending Rule Docket No. 09-0106-0701. The motion carried

with a **Voice Vote**.

DOCKET NO. Rules of Benefits Bureau
09-0130-0701

This is a rule change for the Benefits Bureau that inserts wording to authorize the department to direct unemployment insurance claimants on the method they must use to report their weekly job search and availability for work. Currently, almost all claimants are directed to report by telephone or computer but there are about 400 who can only report by mail using a card because they have no telephone or computer. These 400 are engaged in training instead of job search and the training has to sign certification that they attended training that week. This places into law the directive that the department claimants report electronically except in these two cases.

MOTION: **Senator Broadsword** made a motion, seconded by **Senator Biliyeu**, to approve Pending Rule Docket No. 09-0130-0701. The motion carried with a **Voice Vote**.

DOCKET NO. Rules of Disability Determinations Service
09-0201-0701

This creates a rule for the agency for the purpose of imposing a one year limitation on vendor submission of bills to be paid. Currently there is no limitation on the time that vendors must submit their invoices.

Senator Coiner asked why they chose one year instead of six months or 90 days? **Mr. Fick** responded that the consensus was that a year would be sufficient time for any vendor to submit their billing. **Senator Davis** asked if the vendor fails to timely submit the billing, what is the legal effect of this rule? **Mr. Fick** answered that the bill would not be paid. **Senator Davis** asked does it preclude the vendor from otherwise collecting the bill or does this preclude them from collecting it from the department? **Mr. Fick** clarified that the agreement for services is between the department and the vendor and does not involve the applicant and consequently there would be no other means to recover the money. **Senator Davis** asked that in the event that there was a dispute between the department and the vendor, does the vendor have the right to file suit against the department? **Mr. Fick** responded he presumed so but did not know the procedure. **Senator Davis** asked what statute of limitation would control this rule or the one set in Idaho Code and if he thinks it is appropriate to establish this type of statute of limitations by rule or should it be set by Idaho Code? **Mr. Fick** responded that he would assume that would be a policy question that the Legislature would want to settle. There was no law or rule setting any type of limitation for submission of invoices. **Mr. Fick** said he understands that other states have done this by rule, whether that has any effect on how Idaho would handle it he does not know.

MOTION: **Senator Davis** made a motion, seconded by **Senator Broadsword**, to

approve Pending Rule Docket No. 09-0201-0701. The motion carried with a **Voice Vote**.

Vice Chairman Coiner welcomed **Shad Priest, Deputy Director, Department of Insurance**, to present Pending Rule Dockets No. 18-0101-0701, 18-0103-0701, 18-0106-0601, 18-0160-0701, 18-0179-0701, 18-0144-0701, and 18-0150-0701.

DOCKET NO. Title Insurance Definition of Tract Indexes and Abstract Records
18-0101-0701

This rule deals with title insurance and Idaho law which requires that title insurance agents maintain a complete set of tract indexes that can be used in tracing a chain of title on a piece of property and that it must be complete from the inception of title from the U.S. Government to the present. There are two types of title indexes retained by title agents 1) tract index records of title for pieces of property and 2) name index which deals with specific individuals or entities (persons and corporations) and events that happen to them that can effect title to the property that they own. The intent of the rule and how it has been applied historically has been the tract index has to be complete back to the title from the U.S. Government. The name index, many of which are subject to statute of limitations, disillusion of a corporate entity or death of an individual, may over a period of time lose their legal affect and it was not expected of title agents to retain a complete name index going back to the inception of title from the U.S. Government. We are requesting that you approve this rule that would clarify that the requirement be complete to the inception of title from the U.S. Government apply only to the track index and not to the name index. Name indexes are to be held as long as they would have legal effect.

Senator Bilyeu asked are the title companies doing both now? Mr. Priest replied they are not. It has always been an understanding that the name index records are held as long as they would have legal effect. **Senator Bilyeu** asked if they are not doing it now, are we just legalizing that they do not have to, is that the intent of this rule? Mr. Priest stated that their intent is to clarify their practices.

MOTION: Senator Goedde made a motion, seconded by **Senator Broadsword**, to approve Pending Rule Docket No.18 -0101-0701. The motion carried with a **Voice Vote**.

DOCKET NO. Military Sales Practices Rule
18-0103-0701

In 2006, Congress passed a law that caused the states to adopt uniformed standards governing insurance sales to military personnel. This was in response to a number of high profile news reports about insurance agencies that were targeting young financially inexperienced military personnel with high pressure sales pitches for annuity life insurance products that were not suitable for individuals in that age group. Last year **Mr. Priest** said he came before this committee with an

amendment to the law which allows the department to adopt rules governing military sales practices. That law was enacted and today you have in front of you the modeled rule that goes with the law which defines unfair solicitation practices.

Senator Broadsword asked **Mr. Priest** if we have experienced these unfair solicitation practices in Idaho. **Mr. Priest** responded that to his knowledge they have not been a problem in Idaho; there is a good agent community.

MOTION: **Senator Broadsword** made a motion, seconded by **Senator Goedde**, to approve Pending Rule Docket No.18 -0103-0701. The motion carried with a **Voice Vote**.

DOCKET NO. **Rule to Implement Uniform Coverage for Newborn and Newly Adopted Children**

18-0106-0601 This rule was adopted with negotiating rulemaking and with participation from consumer representatives, the industry and several members of the Legislature, to achieve a rule that would be consistent and fairly applied by all the carriers. The rule defines what is considered a congenital anomaly and provides some examples. The rule requires carriers to provide newborn and newly adopted children the coverage that is no more restrictive than provided for others under the health plan. It prohibits the insurer denying coverage for congenital anomaly on the grounds that the procedure is cosmetic or reconstructive. The rule allows carriers to include a provision in their contracts requiring that they be notified of a birth or adoption within 60 days of the event. It allows for portability, if parent changes jobs, so the new carrier cannot deny coverage to that child on the grounds that it is a preexisting condition.

Senator Davis asked if the parent changes jobs, can they still exercise their Cobra rights? **Mr. Priest** said that absolutely this does not change anything on Cobra rights.

Senator Broadsword asked why an insurance company might say that they didn't have enough notice of a baby being born. If the company paid for the cost of the baby to be born, how can they deny that it was born. **Mr. Priest** responded that reasonably you would think not but they have had instances where that issue has come up.

Senator Goedde asked if there was anyone here to testify against this rule? **Vice Chairman Coiner** replied that there was no one signed up to speak on this rule and he also asked the audience if anyone wished to speak for or against this rule. There was no response from the audience.

MOTION: **Senator Goedde** made a motion, seconded by **Senator Broadsword**, to approve Pending Rule Docket No.18 -0106-0601. The motion carried with a **Voice Vote**.

DOCKET NO. **Long-Term Care Insurance Minimum Standards**

18-0160-0701 This rule imposes some requirements for training of insurance agents who want to sell these types of products. The agent has to take an eight hour

training class for the purpose of learning about the insurance and also the Medicaid eligibility requirements. Then an additional four hours of training every two years.

Senator Goedde asked if these hours also count towards their licensing requirements? **Mr. Priest** replied they do. **Senator Broadsword** asked **Mr. Priest** to clarify where the 8 hours of training was located in the document? **Mr. Priest** responded that the 8 hours of training was in paragraph eight "one time training course will be no less than 8 hours".

MOTION: **Senator Werk** made a motion, seconded by **Senator Broadsword**, to approve Pending Rule Docket No.18 -0160-0701. The motion carried with a **Voice Vote**.

DOCKET NO. **Recognition of Preferred Mortality Tables for Use In Determining Minimum Reserve Liabilities**

18-0179-0701 This rule is basically an actuarial mortality table life insurance companies use in pricing their products. It allows insurers to more accurately rate risk between preferred and non-preferred to classify certain risk factors in potential insurees.

Senator Goedde asked are we dealing mostly with how companies determine minimum reserves and we are allowing them to set reserves for their preferred classes of business based on more favorable tables? **Mr. Priest** stated that this is correct, by being able to retain lower reserves for the preferred risks they can price their product lower for those risks.

MOTION: **Senator Goedde** made a motion, seconded by **Senator Werk**, to approve Pending Rule Docket No.18 -0179-0701. The motion carried with a **Voice Vote**.

DOCKET NO.

18-0144-0701 **Schedule of Fees, Licenses and Miscellaneous Changes**

This rule will reinstate the standard licensing rule fee for persons who sell insurance in Idaho when they renew their license. Several years ago, **Mr. Priest** said the Department reduced the fee for insurance producers when they renewed their license on-line through the computer. We reduced it from \$80 every two years to \$60 every two years. The percentage of agents using the on-line renewal process has increased to more than 90% and so the incentive program is no longer needed and we wish to return to the original renewal fee. The \$80 fee remains the lowest license fee in the United States. We have not receive any comments in opposition to this change.

Senator Goedde stated that if they could get by for \$10 less a year with on-line renewal he doesn't understand why you are returning to the original fee and not rewarding your agents for being efficient? **Mr. Priest** replied we have gotten by with the reduced fee; but would like to return the fee to the original \$80 to have all renewals on the same page fee wise. **Senator Davis** stated that this was not the most compelling argument and it makes him want to reject the fee rule. **Mr. Priest** stated that Jim Genetti, Bureau Chief Consumer Services, is present today and

he might have additional information concerning returning to the standard licensing fee. **Mr. Genetti** answered that the department is attempting to standardize fees for a new computer system and that is why they need to return to the original fee. **Senator Davis** asked if the bureau doesn't need the money and your target is to standardize, what will you do with the increased fees? **Mr. Genetti** stated probably give it back to the Legislature.

MOTION:

Senator Davis made a motion, seconded by **Senator Werk**, to reject Pending Rule Docket No.18-0144-0701. The motion carried with a **Voice Vote**.

Vice Chairman Coiner welcomed **Mike Larson, State Fire Marshall, Department of Insurance**, to present Pending Rule Docket No.18-0150-0701 to the committee.

DOCKET NO.

18-0150-0701

Adoption of the 2003 International Fire Code

This rule adopts 2006 addition of the International Fire Code. In the previous legislative session the 2006 addition of the International Building Code was brought to you by the Division of Building Safety; that addition passed. This is the companion document to the 2006 International Building Code. The changes that the Department is proposing are editorial changing references from 2003 addition to the 2006 addition. A public hearing was requested and held on the adoption of this rule. Some citizens in Midvale had a concern about the application of the Fire Code by a local authority. They asked the Department to modify the rule to remove the flexibility of the local authorities to interpret the code and we chose not to comply.

Senator Goedde stated that it was his recollection that this body did not entirely pass the code change. There were a few items excluded when we went from the old code to the new. Do those exclusions affect the 2006 International Fire Code that you are trying to adopt by rule? **Mr. Larson** clarified that when the 2003 Building Code addition was adopted three-plex and four-plex housing units sprinkler systems were excluded. During the passage of the Building Code last year the Division of Building Safety still excluded the three-plex and four-plex's requirements for sprinkler systems and the Fire Code matches the Building Code in that exemption. **Senator Davis** asked other than the City of Midvale, are you aware of any other objections to this rule? **Mr. Larson** responded that he is not aware of any objections. **Senator Werk** asked for clarification on why the title of the rule is the Adoption of the 2003 International Fire Code? Could we change the title to Adoption of the 2006 International Fire Code as it seems it will become more misleading over time. **Mr. Larson** responded he was guided in his construction of the rule by the rulemaking office. He said he was told that he had to title it this way because they were changing the existing rule to reflect the adoption of 2006 addition. **Mr. Stevenson, Administrative Rules Coordinator**, said he honestly didn't know why they did it this way. Logically it should have been titled adoption of 2006 International Fire Code. In defense of his

office, they do not dictate to the agencies what they have to call the rules.

MOTION: **Senator Werk** made a motion, seconded by **Senator Broadsword**, to approve Pending Rule Docket No.18 -0150-0701. The motion carried with a **Voice Vote**.

Vice Chairman Coiner welcomed **Ms. Bourner, Grant Analyst, Department of Commerce**, to present Pending Rule Docket No.28-0203-0701 to the committee.

DOCKET NO.

28-0203-0701

Rules of Idaho Regional Travel and Convention Grant Program

The rule changes pertain to the grant program which receives 45% of all funds derived from the 2% hotel/motel and campground tax levy in the State of Idaho. Item 02 added the word hospitality training for clarity. Item 05 fulfillment is sending out information via the mail in response to inquiries in the grant. Each grant will have 10% deducted from it for fulfillment costs. Item 07 slide show is no longer relevant, and removes this wording. Item 09 removes restrictions of capital outlay for computers, watts lines, In Focus projector and other equipment to complete their marketing program for each region. Subsection F, Item 09, a housekeeping rule was requested last year that grantees not be required to go out for formal bid unless the project was going to be for an amount of \$20,000 or more. This was to put the grant rules in line with the Department of Commerce Rules. An informal bid is required for amounts between \$1,500 and \$20,000 after that they must go out for a formal bid.

Senator Davis asked what percentage of grants are currently covered, and by jumping from \$5,000 to \$20,000, how many more will be excluded? He said he was am concerned that we are writing this rule so that no one has to go through the bid process. **Ms. Bourner** replied a marketing plan these days can easily go to \$20,000 or if you have a marketing and advertising company handle all your media. Currently there are 24 grants, 30%, that are over \$20,000.

Item 09, subsection G removes movie and slide projector language. Subsection H changes language from \$5,000 to \$20,000. Item 200 Chamber of Commerce, tourism promotion groups and Idaho Outfitters and Guides Association regional groups need clarification that every grantee must apply a cash match of 12.5% to complete the grant contract. Section 203, Item 01, clarifies information of what can be paid for out of the 10% administrative fund.

Senator Davis requested further clarification of Subsection F, Item 09. He asked when the Department of Administration changed the \$20,000 bid requirement, did they change it by administrative rule or by statute? **Ms. Bourner** said by rule.

Item 209 use is to require in kind the amount of 37.5% of the grant. **Ms. Bourner** said they chose to eliminate that last year through the rule

process and they need to delete in kind match because it is no longer required. When granters apply for a grant and it is awarded, it is by an element or activity group. Within these categories they might need some latitude to shift funds in cases such as changing markets or acts of nature or fire that affect their business. The rule would allow a graduated scale of amounts to be able to move between their grant elements.

Senator Broadsword had questions concerning the multi-regional promotion grants that went from a 50% match to a 12.5% which seems like a big spread. **Ms. Bourner** replied 37.5% in kind match and a 12.5% cash match and they eliminated the in kind match because it was too easy to cook the books. **Senator Davis** inquired about the change in the percentages he assumes we are talking about negotiated rule making. He said he assumes it has been appropriately vetted and that you can represent to the committee that there has been no opposition to the change in these percentages. **Ms. Bourner** said there has been no opposition, in fact, this is thought very highly of by the grantees.

The final change. When there is a change in the scope of work that the grant was originally approved or there is a shift in funds greater than \$10,000 the change would come to Ms. Bourner. She approves it then it is sent to the Idaho Travel Council member who represents the region for approval and then it goes out to the rest of the Travel Council for their approval or denial. The rule change proposes that if the regional travel council member approves of this change, change in scope or a budget shift beyond the current allowable limit, that would suffice as approval for the change.

Senator Davis asked how many members are on the travel council? **Ms. Bourner** responded that there is one member for each of the seven regions and an at large member. **Senator Davis** asked if there isn't value in a region on some of the larger grants in requiring approval and the graduated rate on grants? Why don't you say anything less than \$10,000 be approved by the regional member; but on the bigger ones above whatever threshold you deem appropriate, that it still require the approval of the travel council? **Ms. Bourner** replied the graduated allowance for moving funds around was actually proposed by the Idaho Travel Council. The regional travel member does correspond frequently with their grantee as they know more about their activities and purposes of their business. It was a rubber stamp procedure to get a majority vote of the Travel Council and that is why they proposed this change. **Senator Davis** said he understands that it may be rubber stamped but sometimes on these larger grants, there is value in having collective decision making even if its in deference to the regional opinion of other members of the council. Otherwise a member of the council can make this decision that is binding on the council and then the State of Idaho and he doesn't feel comfortable with this procedure. **Ms. Bourner** responded that Senator Davis has a valid point and if you think this is a better governance of the taxpayers money then I will present this to the granter and the Travel Council. **Senator Andreason** said the rule states that just the regional person has to authorize, does anyone else read it on the council? **Ms. Bourner** stated no one else reads it. **Senator Goedde** stated he would take it one step further and question the propriety of allowing one person to approve

funds. Since members of the Travel Council are part of the industry at large and a grant could be construed in one area and the scope of that grant could be changed to favor the travel council's business and it would be very inappropriate for that member to have the only oversight on the funds. **Senator Werk** asked **Ms. Bourner** if you set up the original rule to allow funds to move around as long as they act within the limits, and then we get to a rule where if you want to really move a lot of money around, one member is authorized to sign for this change? **Ms. Bourner** responded that would be the worst case scenario and it could happen.

MOTION: **Senator Werk** made a motion, seconded by **Senator Goedde**, to approve Pending Rule Docket No. 28-0203-0701 in full, rejecting on page 226, subsection 2-22-02 E. The motion carried with a **Voice Vote**.

ADJOURNMENT **Vice Chairman Andreason** adjourned the meeting at 2:42 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's office until the end of the session. After that time the material will be on file in the Legislative Services Library Annex 5th Floor.

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 22, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Cameron

GUESTS: See attached sign-in sheet.

MINUTES: The meeting was called to order by **Vice Chairman Coiner** 1:32.

Vice Chairman Coiner welcomed **Don Drum, Deputy Director, PERSI**, to address the committee regarding Docket No. 59-0107-0701.

DOCKET NO. 59-0107-0701 **Public Employee Retirement System of Idaho**

This rule will more closely balance the interest credited to member accounts with the actual net earnings of the PERSI fund over time. Two primary objectives to this proposed change: 1) To reflect earnings by PERSI on member accounts. This change will have no impact on the members retirement benefit except for the amount a member would receive as a result of a separation or Death benefit. 2) The change would protect the member account from negative earnings.

The rule moderates the interest that will accrue to a members account at both ends of the spectrum by reducing the regular interest to 90% of actual returns of the fund net of expenses and by lowering the floor to 1%. The Actuary believes this proposal will provide the fund with protection during negative market periods.

Senator Werk asked **Mr. Drum** for a retiree are we changing pay-outs to retirees based on a different formula. **Mr. Drum** replied that this rule would not have an impact on actual retirees. It would only effect individuals leaving the employment of one of our employers and taking their separation benefit, they would only get to take the amount accrued or in the event of a death and paying out a death benefit. **Senator Werk** asked in a scenario of an individual separating from the PERSI system and they have monies that have built up over time in the amount of \$100,000, could you tell me what their pay-out would look like before this rule and after. **Mr. Drum** explained that a member would receive either the greater of the net returns to the fund of 20% or 90 day average of the Treasury rate with a floor of 3%. Each year you would receive the interest credit on your employee contributions into the fund, plus the interest. This

would change it from the example I gave the net of the fund was 20% rather than receiving \$20,000 you would receive \$18,000. If the fund had lost money, rather than receiving \$3000 you would receive \$1000. **Senator Werk** asked what is the scope of this rule change for the future of the fund? **Mr. Drum** clarified that the Actuary recommended this change and its purpose was to protect the fund in a negative market. By protecting the fund, they are able to balance the need to come back to our employers for a contribution rate change. **Senator Werk** questioned whether we were overpaying our employees at present based on the formula that is in place now and are individuals taking more funds out of the plan when they separate from the State. **Mr. Drum** stated the Actuary believes that we need to provide this insulation to balance and stabilize the fund so we do have fewer adjustments to contribution rates. **Senator Davis** stated this rule speaks to the process of accrual of rights versus a reduction and this just modifies the formula that grants what the individual is entitled to upon separation from the PERSI fund. The Actuary is supplying a formula that better reflects market fluctuations for this new rule. **Mr. Drum** responded that this was correct. **Senator Stegner** assumed that they made the calculations and the floor, which is arbitrary, and it is being funded by the 10% reduction in rate of interest rates and that the reserve will actually pay for that you would have significant reduction in rates to the point that you will make that up? **Mr. Drum** stated the actuary put this plan together based on an historical assessment of the market. **Senator Davis** asked that what they have today is effectively vested and it only has a perspective application, is that right? **Mr. Drum** replied yes that is correct. **Senator Bilyeu** questioned why this year are you asking for this change? **Mr. Drum** responded the Board had approved three rate changes that were to go into affect over time. They enacted the first of those rate changes and they delayed the last two rate changes. As they accessed the need for putting those rate increases off they had the Actuary look into if they put these rate changes off, what other things could they do to protect the fund? This rule before you is one of those items that came out of that Actuarial assessment.

MOTION:

Senator Stegner moved to approve Pending Rule Docket No. 59-0107-0701. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Jim Ellick, Director of Commerce, Department of Commerce**, to introduce himself to the committee.

Questions were posed by **Senators Davis and Werk**, asking to clarify that the committee has the opportunity to have the introduction and hear from **Director Ellick** today, but when the formal bio information from the Governor is received, we will hold a subsequent meeting for the formal confirmation by this committee. **Chairman Andreason** stated that is correct. **Director Ellick** presented achievements over the last year listing twenty companies that they attracted to the state, CAPX \$588,000,000, 2,300 jobs, payroll of \$56,000,000. Tourism was \$3.6 billion, with \$4.1 million business, international business should exceed \$4 billion for the first time. Forbes rates us 6th as the best state for business, Washington

state which was 12th is now 5th so we need to find out what Washington has done to move themselves so aggressively forward and Utah went from 4th to 2nd. **Chairman Andreason** asked **Director Ellick** to address what changes need to be made in his department to play catch-up with Washington and Utah. **Director Ellick** replied we are going to focus on bringing more diversity to the state. **Chairman Andreason** questioned that tourism lost a very capable person and you chose to hire within to replace them would you explain why you chose to do that? **Director Ellick** replied that Karen Ballard had the most history with the division, so it would allow us not to lose momentum. **Senator Goedde** asked why Forbes gave Idaho its worst score of 33 for regulatory and environmental rankings and you were going to try to identify why we scored so poorly. **Director Ellick** replied that his department had not been able to extract the alga-rythums from Forbes and we have yet to figure out why our number is so bad. **Senator Broadsword** asked if Idaho is competing with Washington and Utah to attract business? Are their tax structures more attractive than ours, is that the draw? **Director Ellick** stated they come out the same in taxes as other states. **Senator Broadsword** asked what is not causing us to close on businesses relocating to our state? **Director Ellick** replied the Commerce Department has no outside sales force and we are updating our website to capture the companies in the sale cycle. **Senator Werk** asked what can you attribute to some of the states placing so high in rankings? **Director Ellick** said the other states have incentive programs. In Oregon \$28.3 million to help medical and pharmaceutical start-ups in their state. We are in the process of getting a list of incentives from the other states to see what their practices are to draw businesses to their states.

Vice Chairman Coiner recognized **Stephen Keys, Deputy Administrator**, to present Pending Rule Dockets No. 07-0101-0701, 07-0103-0701, 07-0104-0701, 07-0106-0701, 07-0107-0701, 07-205-0701, 07-0206-0701, 07-0207-0701, 07-0402-0701, 07-0501-0701, 07-0701-0701, 07-0701-0702, and 07-0701-0703.

DOCKET NO.

07-0101-0701

Rules Governing Electrical Inspection Tags

This pending rule deletes the existing references to multi-part permit forms. Division of Building Safety is implementing a new software system which allows customers to conduct most business via the internet. Multi-part forms are expensive and will not be necessary with the new system. **Senator Goedde** questioned on page 7, where you have changed personal property to homeowner, how does this effect the farmer? **Stephen Keys** responded that we refer to all groups of individuals as property owners. **Senator Goedde** asked what about a building that is in close proximity to a farm house, but does not service the farm house instead services the farm? **Stephen Keys** answered that this building would be handled as an out-building and the farmer would be allowed to perform the electrical work on that building. **Senator Davis** asked what if he were to do electrical work on a pump? **Jeff Fitzloff, Electrical Bureau Chief**, answered this change reflects the wording that changed in Statute 54-1016 which deals with exemptions for homeowners. This statute

defined homeowner. We had individuals buying up whole city blocks and then building houses and doing their own electrical work. This was a problem because it was property owner work and there were issues with titles and warranty work. Two years ago when 54-1016 changed the definition from property owner to homeowner, if a pump was out in the middle of a field for irrigation purposes they would be considered commercial.

MOTION: **Senator Werk** moved to approve Pending Rule Docket No.07-0101-0701. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules of Electrical Licensing & Registration - General**

07-0103-0701

This pending rule raises the qualification requirement for electrical contracting licenses. Presently, an applicant for an electrical contractor's license is required to have in his employ, a signing journeyman electrician with at least two years experience as a journeyman, who is responsible for the operations of the contractor. This rule raises the qualification requirement to assigning master electricians to all new electrical contractor licenses, and imposes the same requirement on current contractors when their present qualifier leaves their employ. The fundamental difference between a journeyman and master electrician is that the master must demonstrate that he has four years experience as a journeyman and pass a more comprehensive exam. This rule does not affect industrial accounts or specialty contractors, and has been arrived at through the negotiated rulemaking process. **Senator Broadsword** questioned whether all parties were happy at the end of the negotiated rulemaking? **Mr. Keys** responded that they had received no negative comments concerning this rule change. **Senator Davis** asked what percentage of the journeyman contractors currently have received the master electrician designation? **Jeff Fitzloff**, stated the last count he had there were 489 master electricians. **Senator Davis** asked if the committee adopts this rule, can we have confidence that there are plenty available master electricians to be able to train those apprentices that want to become journeyman? **Mr. Fitzloff**, stated the apprentices become journeyman and there is a waiting period right now to get a contractor license. There should be plenty of master electricians out there to train the apprentices. **Senator Goedde** inquired if the bureau has developed a system that would alert them when a contractor's liability insurance comes up for renewal that the bureau gets a new certificate of insurance or proof of some sort that they are current with insurance? **Mr. Keys** replied that their new software has the ability to track this information. **Senator Stegner** questioned if we are raising the level of requirements for master contractor qualifications for all new individuals who are applying to be contractors in the state are we exempting individuals that already hold a contractor's license who are only journeyman? **Mr. Keys** stated that typically when a requirement is raised, the individuals that previously met the existing requirements were grandfathered. In the future, the board is putting into place rules for the industry that will test licensed electricians so they will have to demonstrate that they are competent to do the work. **Senator Stegner** asked **Mr. Keys** to elaborate on what will be required in the future for these

individuals to demonstrate that they can run a business along with the technical competency as part of being a qualified electrician? **Mr. Keys** replied that one of the areas they will be testing for competency is financial management and be able to read a set of books.

MOTION: **Senator Davis** moved to approve Pending Rule Docket No.07-0103-0701. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

DOCKET NO. Rules Governing Electrical Specialty Licensing

07-0104-0701 This rule specifies that the previous rule change is not applicable to specialty contractors.

MOTION: **Senator Broadsword** moved to approve Pending Rule Docket No.07-0104-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. Rules Governing the Use of National Electrical Code

07-0106-0701 This rule adopts the 2008 National Electrical Code, with significant amendments that resulted from discussions with affected industries. The requirement for arc-fault circuit interrupters has been limited to 120 volt circuits supplying outlets installed in dwelling unit bedrooms. The 2008 NEC would require protection on all 120 volt circuits. Significant changes were also made to the bonding requirements for swimming pools. The electrical board reinstated bonding requirements contained in the 2002 NEC, as the board felt these requirements were more easily understood and accepted by swimming pool installers and electricians. The 2002 requirements are substantially less stringent than those contained in the 2008 NEC. **Senator Broadsword** stated that she had priced the tamper resistant outlets and they are over \$4.00 at Home Depot whereas a regular outlet is .39¢. Please tell me how this is not costing us more for this rule? **Mr. Keys** stated he believes what they have encountered is a vendor trying to get rid of their old inventory. Previously the tamper resistant devices were only available in specification grade for commercial use. **Senator Broadsword** stated that senior citizens have a difficult time with tamper proof outlets, will there be any compensation made if an individual does not want these devices in their home? **Mr. Keys** replied it is a provision of the code and must be applied to all new buildings. If it would help, we could demonstrate the device for reassurance. **Senator Broadsword** asked what happens if we do not ratify the pending rule and let the other states get the kinks worked out before we adopt the code? **Mr. Fitzloff** responded that we would lose the benefit of some very good code amendments. **Senator Davis** stated that he would like to pass voting on this rule until the outlets could be demonstrated to the committee so they could make a more informed decision. **Vice Chairman Coiner** stated that Docket 07-0106-0701 will be held over.

DOCKET NO. Rules Governing Continuing Education Requirements

07-0107-0701 This rule defines the requirements for the approval of continuing

education sponsors, courses, and instructors that were previously referenced only in policy. Continuing education is required for renewal of electrical licenses.

MOTION: **Senator Stegner** moved to approve Pending Rule Docket No.07-0107-0701. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules Governing Plumbing Safety Licensing**

07-0205-0701 This rule change requires an installer of a water conditioning system to hold an appliance plumbing specialty license, or a journeyman plumber license. The requirement has been discussed across the State, and has been widely endorsed by water conditioning companies. **Senator Broadsword** asked how do the plumbers like this rule? **Mr. Keys** replied that the Plumbing Board adopted this rule and there have been no negative comments from the plumbing contractors.

MOTION: **Chairman Andreason** moved to approve Pending Rule Docket No.07-0205-0701. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules Concerning Uniform Plumbing Code**

07-0206-0701 This rule change defines the circumstances where sidewall venting may be utilized, and allows for limited usage of air-admittance valves where traditional venting methods are impractical.

MOTION: **Senator Stegner** moved to approve Pending Rule Docket No.07-0206-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules Governing Civil Penalties**

07-0207-0701 This rule change clarifies that the board does not intend for civil penalties to be levied on licensed plumbing contractors. The board feels that current remedies including license suspensions and revocations are more effective. **Senator Goedde** asked if a licensed contractor can be subject to both? **Mr. Keys** said they are not enforcing civil penalties on contractors at the behest of the board and it becomes a question of intent of language. This rule clarifies and takes interpretation of the language out of the rule. **Senator Goedde** asked if the board has decided not to enforce Idaho Code or is this a part of rule? **Mr. Keys** replied this is rule.

MOTION: **Senator Broadsword** moved to approve Pending Rule Docket No.07-0207-0701. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Senator Bilyeu stated the civil penalty portion of this rule is what troubles her. **Mr. Keys** clarified that in the plumbing, electrical and HVAC programs the Legislature has given the administrator the ability to issue civil penalties as the rules are formulated and approved by the boards. On the electrical and HVAC side contractors are subject to civil penalties; civil penalties work to encourage the proper behavior without going into the formal process involved in license revocation and suspension. On the

plumbing side, if this rule goes forward, we will have to give a contractor two warnings and institute a formal process to suspend or revoke their license. **Senator Stegner** stated that this seems extremely self-serving by the Plumbing Board, why would we want to limit the ability to influence their behavior by imposing civil penalties especially when you tell us it works very well for the in other licensing areas. **Mr. Keys** replied that the Plumbing Boards feeling is that they would like to skip the civil penalties provisions and go straight to the more formal procedures to revoke or suspend their contractor's license. They want their contractors to be held to a higher standard and civil penalties should not be a problem. **Senator Goedde** stated it appeared that without this change in the rule a contractor could be subject to civil penalty and license censure. It seems that the board is losing one of its tools of enforcement. **Senator Goedde** moved to reject, seconded by **Senator Stegner**, Docket No. 07-0207-070. **Senator Broadsword** asked to speak to the original motion? A plumbing contractor who has his license suspended instead of a fine will comply quicker to fix his plumbing practices because it is affecting his pocketbook. **Senator Stegner** stated that he thought this rule was sending the wrong message to the Legislature and to the citizens of the State when one licensing board in one industry will not bother with allowing regulatory people to issue civil penalties. These penalties are a valuable tool that regulators have to get the attention of the contractors and a \$200 fine with the threat of the next level of enforcement which would be suspension of their license would get their attention. **Senator Stegner** asked **Mr. Keys** if the Plumbing Board would like address the Committee and explain their actions. **Mr. Keys** responded that the Plumbing Board should present their views to the Committee at a subsequent meeting. **Senator Goedde** withdrew his previous substitute motion and offer another substitute motion, seconded by **Senator Werk** that we hold this Committee for time certain of a week to allow the Plumbing Board to address our concerns. The motion carried by a **Voice Vote**.

Chairman Andreason adjourned the meeting at 2:55 p.m.

The following agenda items were not addressed because of time constraints.

**DOCKET NO.
07-0402-0701**

Safety Rules for Elevators, Escalators, & Moving Walks

**DOCKET NO.
07-0501-0701**

Public Contractors License Board

**DOCKET NO.
07-0701-0701**

Rules Governing Installation of Heating, Ventilation & Air Conditioning Systems

**DOCKET NO.
07-0701-0702**

Rules Governing Installation of Heating, Ventilation, & Air Conditioning Systems

DOCKET NO.

Rules Governing Installation of Heating, Ventilation, & Air Condition

07-0701-0703 Systems

Senator John Andreason
Chairman

Carol Deis
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's office until the end of the session. After that time the material will be on file in the Legislative Services Library Annex 5th Floor.

REVISED JANUARY 24, 2008 MINUTES
(Revision of motion on Docket No. 07-0301-0701)

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 24, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:29 p.m.

Vice Chairman Coiner introduced **Stephen Keys, Deputy Administrator, Division of Building Safety**, to address the committee regarding Docket No. 07-402-0701, 07-0501-0701, 07-0701-0701, 07-0701-0702, 07-0701-0703, 07-0102-0701, 07-0203-0701, 07-0303-0701, 07-0701-0704, 07-0301-0701.

DOCKET NO. 07-0402-0701 **Safety Rules for Elevators, Escalators, & Moving Walks**

This rule adopts the current versions of the elevator codes that will apply to elevators and lifts installed. The administrator of the Division of Building Safety is charged with promulgating rules to adopt the editions of the applicable codes that are being enforced.

MOTION: **Senator Broadsword** moved to approve Docket No. 07-0402-0701. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

DOCKET NO. 07-0501-0701 **Public Contractors License Board**

This rule change is necessary to facilitate the enforcement of changes to the subcontractor naming requirements adopted last session in House Bill 139. This rule consolidates two existing categories that involve HVAC work into one clearly defined HVAC category to be included in the naming requirement.

MOTION: **Senator Goedde** moved to approve Docket No. 07-0501-0701. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

**DOCKET NO.
07-0701-0701**

**Rules Governing Installation of Heating, Ventilation & Air
Conditioning Systems**

This rule change establishes the requirements for an HVAC Specialty Hearth Installer license. It also liberalizes experience and education requirements.

MOTION:

Senator Davis moved to approve Docket No. 07-0701-0701. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

**DOCKET NO.
07-0701-0702**

**Rules Governing Installation of Heating, Ventilation, & Air
Conditioning Systems**

This change establishes a specialty license for installers of waste oil heating equipment. The license was established in response to requests from the industry.

MOTION:

Senator Davis moved to approve Docket No. 07-0701-0702. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

**DOCKET NO.
07-0701-0703**

**Rules Governing Installation of Heating, Ventilation, & Air Condition
Systems**

This rule change establishes an HVAC specialty license for fuel gas piping installers. Again, this proposed rule was promulgated at the behest of the industry.

MOTION:

Senator Davis moved to approve Docket No. 07-0701-0703. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

**DOCKET NO.
07-0102-0701**

Rules Governing Fees for Electrical Inspections

This rule changes the basis for permit fees for residential electrical work, and establishes a common fee structure for non-residential electrical, plumbing, and HVAC permits. The resulting fees for residential work are comparable to existing fees with some increases in larger residences. The fees for commercial/industrial installations are increased for electrical but decrease substantially for plumbing and HVAC. The net result is a consistent, understandable permit fee basis for plumbing, HVAC, and electrical permits that will facilitate the implementation of the new licensing/permitting software. The other notable component in these rules is increasing hourly fees to \$65/hr from \$45/hr, which reflects the actual cost, including overheads and equipment.

MOTION:

Senator Davis moved to approve Docket No. 07-0102-0701. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

**DOCKET NO.
07-0203-0701**

Rules Governing Permit Fee Schedule

This rule reflects the plumbing fee changes introduced in discussion of **Docket No. 07-0102-0701**.

MOTION: **Senator Davis** moved to approve Docket No. 07-0203-0701. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules for Modular Buildings**
07-0303-0701

This rule establishes administrative rules necessary to support the operation of the modular building board. Rules which previously governed the modular building industry were rendered moot by Senate Bill 1155, passed last session, which established the Modular Building Board.

MOTION: **Senator Broadsword** moved to approve Docket No. 07-0303-0701. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules Governing Installation of Heating, Ventilation, and Air**
07-0701-0704 **Conditioning Systems**

This rule reflects the changes to HVAC permit fees previously referred to in **Docket No. 07-0102-0701**.

MOTION: **Senator Davis** moved to approve Docket No. 07-0701-0704. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules of Building Safety**
07-0301-0701

This rule resulted from the adoption of the 2006 International Building Code by rule last year. The local jurisdictions requested a delay in implementation of the codes to January 1, 2008, to facilitate budgeting and education of their staffs.

MOTION: **Senator Davis** moved to hold Docket No. 07-0301-0701. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. **Contribution Rules for the Public Employee Retirement System of**
59-0102-0801 **Idaho (PERSI)**

This rule is the result of the PERSI Board review based on actuarial valuation of reserve and liabilities, the contributions that are necessary to fund the level of benefits authorized by the plan. The 2003 proposed rules provided for a series of three annual contribution rate increases beginning July 1, 2004, through July 1, 2006. The first rate changes went into effect, then favorable market conditions significantly improved the funding status of the plan. That favorable funding has pushed out the subsequent two rate contribution increases. The Board will continue to monitor funding and market conditions and will take appropriate action regarding contribution rates if needed.

Adoption of this temporary rule would result in the current contribution rates reflected in these rules continuing effective February 1, 2008.

MOTION: **Senator Stegner** moved to approve Docket No. 59-0102-0801. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. **59-0106-0701** **Retirement Rules for the Public Employee Retirement System of Idaho (PERSI)**

This rule became effective April 11, 2006, regarding contribution rates for the public schools unused sick leave fund were to increase incrementally over a three year period beginning July 1, 2006. The first increase took effect, but subsequent valuation by PERSI actuaries indicates that the additional increases are not needed at this time because of favorable market conditions. This rule would delay the implementation of those increases until July 1, 2009. This temporary rule will keep contribution rates at the current level.

MOTION: **Senator Stegner** moved to approve Docket No. 59-0106-0701. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

DOCKET NO. **33-0101-0702** **Rules of the Idaho Real Estate Commission**

This pending rule establishes standards encompassing the changed license law which went into effect July 1, 2007 requiring real estate education providers to ensure that courses are taught in accordance with the Commission's minimum teaching standards. In addition to the notice provided by the Office of Administrative Rules, the Commission also held a public hearing on this pending rule on July 26, 2007, and no comments were received.

MOTION: **Senator Broadsword** moved to approve Docket No. 33-0101-0702. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO. **33-0101-0703** **Rules of the Idaho Real Estate Commission**

This pending rule amends an existing rule to provide that a notice of non-compliance with the errors and omissions insurance requirement may be sent by first class mail rather than certified mail. Postage alone for a certified letter is now \$3.06, and that does not include the cost of staff time to prepare and attach the green and white slips that must be affixed to each letter. In addition to the great expense incurred, we have found that quite a few people refuse to pick up certified mail, so first class mail seems to get delivered most often.

MOTION: **Senator Broadsword** moved to approve Docket No. 33-0101-0703. The motion was seconded by **Senator Goedde**. **Senator Davis** voted no. The motion passed.

DOCKET NO. **Rules of the Idaho Real Estate Commission**

33-0101-0701

This pending fee rule change is requested because of the passing of legislation last year changing set fees to "not to exceed" amounts, with the exact fee to be established by administrative rule. This pending rule merely codifies the same fees that were previously set forth in statute as exact amounts. No fee increase is proposed.

MOTION: **Senator Goedde** moved to approve Docket No. 33-0101-0701. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

Senator John Andreason
Chairman

Carol Deis
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's office until the end of the session. After that time the material will be on file in the Legislative Services Library Annex 5th Floor.

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 29, 2008, 2008
TIME: 1:30 p.m.
PLACE: Room 117
MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Stegner, Goedde, Broadsword, Werk, and Bilyeu
MEMBERS ABSENT/ EXCUSED: Senators Cameron and Davis
GUESTS: See attached sign-in sheet.
MINUTES: The meeting was called to order by **Chairman Andreason** at 1:30 p.m.

Chairman Andreason then turned the meeting over to **Vice Chairman Coiner** for rules review.

Vice Chairman Coiner informed the committee that the Building Safety Dockets would not be heard today because **Mr. Keys** is in a Rules Review session with the House of Representatives.

Vice Chairman Coiner recognized **Roger Hale, General Counsel, Idaho Bureau of Occupational Licenses** to address the committee regarding Docket Nos. 24-0401-0701, 24-0801-0701, 24-1801-0701, 24-2101-0701, 24-2201-0701, and 24-0701-0701

DOCKET NO. 24-0401-0701 **Rules of the Idaho Board of Cosmetology**
This rule defines that the examinations will be conducted by the National Interstate Council of State Boards of Cosmetology and requires an approved pass rate score of 75% or greater. The Board wants to move out of the examination administration and registration of students; inserting the requirement that students have to successfully pass exam in order to be licensed and deleting language concerning examination and oral examinations. This rule allows the degree to be considered in lieu of high school education and changes the number of minimum hours of training, and 5% of required course work to be completed, before a student can render clinical services to the public.
Senator Stegner asked how often is that National Exam offered? **Mr. Hale** responded that he believed it would be offered on a rotation such as up in northern Idaho, southeast Idaho and in Boise every month. **Senator Stegner** asked is there a waiting time between exams if you fail the first exam? **Mr. Hale** replied that you can take the exam as soon as possible.

MOTION: **Senator Stegner** moved to approve Docket No. 24-0401-0701. The

motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO.
24-0801-0701

Rules of the State Board of Morticians

This rule defines the state based National Examination of Funeral Directors License requirements for examination and licensors and no longer requires a room for viewing casket selection.

Senator Stegner asked why they were using the state based examination rather than the National Board of Examiners? **Mr. Hale** responded that the National Examination is primarily an examination for morticians and it has two aspects for the technicalities for embalming and funeral direction. The National Examination is a special exam for Idaho, which is state based. They are eliminating the embalmer questions on the examination.

The third aspect of the rule combines funeral and crematory establishments into one section.

Chairman Andreason asked if there was a representative in the audience from the Board of Morticians? **Mr. John Buckman, Representative of State Board of Morticians** was introduced.

Chairman Andreason asked is this rule a result of a consensus of the State Board of Morticians? **Mr. Buckman** responded that the Idaho Funeral Service Association has no issues with this rule change. The reason we are changing the name to the state based exam is because the conference will only give the National Board Exam to individuals who have graduated from an accredited mortuary college. The funeral director license does not stipulate that you have to graduate from an accredited school.

MOTION:

Senator Broadsword moved to approve Docket No. 24-0801-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

DOCKET NO.
24-1801-0701

Rules of the Real Estate Appraiser Board

This rule makes changes to the educational requirements. The rule states that there will be three qualifications to receive a real estate appraisers license and they are: 1) specific education, 2) supervised experience and 3) must successfully pass the exam. An individual who has completed their education requirements before December 31, 2007 has three years to submit an application to the board for licensing or they will have to meet the requirements for licensors that become effective January 1, 2008.

Senator Bilyeu questioned number 10 "states Nationally Recognized Appraisal Organization" which you have changed from a member to a sponsor? **Mr. Hale** replied this is at the request of the Federal Subcommittee apparently organizations are not members of the appraisal foundation they are a sponsor.

MOTION:

Senator Bilyeu moved to approve Docket No. 24-1801-0701. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

DOCKET NO.
24-2101-0701

Rules of the Idaho State Contractors Board

This rule establishes an additional qualification for contractor registration.

This registration gives the Board the opportunity to ask the question and review the felony conviction and determine whether they should discipline that registrant.

Senator Werk asked is there a felony conviction that would preclude the Board from licensing a contractor, for instance fraud associated with contracting? **Mr. Hale** replied prior to this rule the Board did not have the authority to ask the question or look at the conviction. The Board tried to strike a middle ground here rather than identify certain crimes that would preclude you from getting a contractors license. The Board chose to have the ability to look at these felonies on a one by one basis. **Senator Werk** asked the Board to supply him with a report on the number of applicants with felonies they have and what the Board decisions have been. **Mr. Hale** stated that he was sure the Board could supply him with that report. **Senator Stegner** asked if the Board is granted the authority to reject a license application because of a felony conviction? **Mr. Hale** replied under current law they are not able to reject a license for a felony conviction. What they are allowed to consider is that you have a liability policy, workman's compensation, and that you have not had a license revoked in another state. Once a contractor is registered in the state then the Board can discipline the felony conviction of the registrant. **Senator Stegner** asked in disciplining that felony conviction does that include revoking a registration? **Mr. Hale** replied the rule does talk in terms of being able to revoke or suspend that registration.

MOTION:

Senator Broadsword moved to approve Docket No. 24-2101-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

**DOCKET NO.
24-2201-0701**

Rules of the Idaho State Liquefied Petroleum Gas Safety Board

This rule incorporates the National Fire Protection Association Code which governs liquid petroleum gas. The Board requires that you submit with your application for facility license a certificate of general liability and the Board has the ability to randomly audit applicants. The Board is requesting authority to adopt an inspection form for facility inspections. **Senator Werk** asked that Mr. Hale to give a definition for facility. **Mr. Hale** answered that a facility is a location that stores for commercial purposes liquified petroleum gas. There are two types of these facilities: 1) Large bulk storage facility with large tanks and 2) Smaller facility as a store or gas station with smaller tanks where customers can fill up their smaller bottles. **Senator Werk** asked for further clarification on the use of facility in the rule includes the smaller facilities where a customer could fill up their barbeque grill tank and it would also be inclusive of bulk storage where there are millions of gallons of liquified petroleum. **Mr. Hale** clarified that if you have a tank that is more than 4,000 gallons you have to have a licensed dealer associated with that tank; the smaller distributors tanks are usually 500 gallons. **Senator Goedde** asked if the liability policies run concurrent with the license or do you have a tracking system to monitor liability insurance renewal. **Mr. Hale** stated that the Board is on the liability insurance policy for notification of cancellation of a policy by a facility. **Senator Werk** stated the Board requires a \$1 million of general liability insurance and that would be fine for the smaller

facilities, but for the larger facilities \$1 million does not seem sufficient to cover an accident at one of those facilities. **Mr. Hale** stated that a certain dollar amount is not required for these larger facilities, but he suspects from a practical standpoint that these facilities have adequate insurance.

MOTION: **Senator Goedde** moved to approve Docket No. 24-2201-0701. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**. **Senator Werk** voted no.

DOCKET NO.
24-0701-0701

Rules of the Idaho State Board of Landscape Architects

This rule incorporates the Board's decisions in making changes to the landscape architect in training program. This program recognizes that once an individual has successfully completed their graduate degree they can become an intern for a period of time. The intern time is connected to their supervisor. The Board wants to limit the term within which an individual can be a landscape architect in training. The only difference between the intern and the licensee is they have to take an examination before they can be a licensed landscaper, however, quite often the test takes a number of years to complete. **Senator Stegner** asked why six years? **Mr. Hale** answered the Board recognized that this should be plenty of time for the interns to work through the examination.

MOTION: **Senator Werk** moved to approve Docket No. 24-0701-0701. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**. **Senator Stegner** voted no.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Vice Chairman Coiner recognized **Mike Larson, Bureau Chief, Idaho Department of Finance** to address the committee regarding Docket Nos. 12-0110-0701.

DOCKET NO.
12-0110-0701

Rules Pursuant to the Idaho Residential Mortgages Practices Act

This temporary rule authorizes the Director of the Department of Finance to establish by rule requirements necessary for Idaho to participate in a nationwide mortgage licensing system.

The Nationwide Mortgage Licensing System, which went "live" 27 days ago, on January 2nd, grew out of cooperative undertaking involving a nationwide mortgage taskforce comprised of mortgage industry representatives and state financial institution regulators. Idaho has been a real leader in this effort, Director Gee, in particular, has spearheaded this effort which positively changes the licensing application and oversight of the mortgage industry in this nation. Idaho was one of the initial seven states that went live with this Nationwide Mortgage Licensing System (NMLS). A temporary rule was necessary to enable Idaho to be among the initial participating states. Idaho has been a leading state in this effort, and have already received positive industry feedback concerning NMLS.

This temporary rule changes the requirements of a mortgage loan originator licensee to obtain at least 2 credit hours of ethics instruction in

the mortgage industry as part of their 16 hours overall credit requirement every 2 years. Training in the Idaho residential mortgage practices act. Requires mortgage brokers, lenders and mortgage loan originators to obtain and maintain their Idaho mortgage licenses through the nationwide mortgage licensing system.

Senator Broadsword said in the rule book subsection 0122B concerning the written application by participants to explain why this requirement went from 30 days to 180 days. It seems quite a bit of time for them to get their paperwork in? **Mr. Larson** answered the members of our mortgage advisory board deemed that the 30 day requirement was too short and they requested this additional time to ensure that any of our licensees attending a course that would count toward their accredited instruction would have ample time to get their hours turned in.

Senator Cameron questioned Mr. Larson on whether they have had any complaints about this rule? **Mr. Larson** replied that the Board is not aware of any opposition to the provisions in this temporary rule.

Senator Bilyeu stated on page 7, on the accrual of credit hours it states they should obtain no less than 2 credit hours directly related to ethics instead of the no less than 14 hours, isn't that a reduction on credit hours? **Mr. Larson** stated that the rules previous to these temporary rules contained no requirements for instruction in ethics, so there is no reduction in those hours. **Mr. Larson** clarified that licensee obtain 12 hours in the general education of instruction, 2 hours of ethics and 2 hours specific to Idaho law.

MOTION:

Senator Goedde moved to approve Docket No. 12-0110-0701. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Vice Chairman Coiner recognized **Dennis Porter, Community Development Manager, Idaho Bureau of Occupational Licenses** to address the committee regarding Docket No. 28-0304-0701.

**DOCKET NO.
28-0304-0701**

Rules of the Business and Jobs Development Grant Fund

Mr. Porter introduced **Pat Mederito, Specialist**. This rule proposes a change to Section 15 award amount of IDPA 28-03-04 which is the rules of the Business and Job Development Grant Fund. The grant is a Director's discretionary fund provided to cities and counties to approve public infrastructure that brings or entices new companies or businesses to Idaho. The reason for this request is last year's Senate bill S1288, which is the Department of Commerce's appropriation bill. Included is the following: Section 5: On July 1, 2007 the State Controller shall transfer the sum of \$1,000,000,000 from the Incumbent Worker Training Revolving Loan Fund to the Business Jobs Development Fund. The maximum grant amount shall be \$250,000 per recipient. The award amount of each grant shall be determined by the Director in his sole discretion that shall not

exceed \$250,000 to bring the administrative rule in compliance with the department's prior appropriation bill.

Senator Broadsword moved to approve Docket No. 28-0304-0701. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

Vice Chairman Coiner recognized **Roger Hale, General Counsel, Idaho Bureau of Occupational Licenses** to address the committee regarding Docket Nos. 14-0101-0701 and 14-0101-0702.

DOCKET NO. **Rules of Procedure of the Board of Registration for Professional Geologists**
14-0101-0701 This fee rule has not been updated in many years and is essentially mostly housekeeping to clarify language, stipulate when geologists should use their seal and adopts the code of ethics.

MOTION: **Senator Broadsword** moved to approve Docket No. 14-0101-0701. The motion was seconded by **Chairman Andreason**. The motion carried by **Voice Vote**.

DOCKET NO. **Rules of Procedure of the Board of Registration of Professional Geologists**
14-0101-0702 This temporary rule was put in place when the bureau began supporting this Board and we had to get notice out to where the public could contact the Board.

MOTION: **Senator Goedde** moved to approve Docket No. 14-0101-0702. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Vice Chairman Coiner recognized **Tom Limbaugh, Commissioner, Industrial Commission**, to address the committee regarding Docket No. 17-0208-0702.

DOCKET NO. **Miscellaneous Provisions**
17-0208-0702 **Mr. Limbaugh** stated this temporary rule changes what was adopted last year and what we have before you as a pending rule. There was a change in the fee schedule table and the annual update for the percentage increase to medical providers. He said the rule refers to the consumer price increase and spelling out the difference between facility and non-facility reimbursements. There are still concerns from the medical association, chiropractic physicians, and emergency medicine physicians so all sides can be satisfied but he does not think these negotiations should hold this rule up at this time.

Senator Goedde asked about the scarcity of the doctors in the State of Idaho has been acknowledged for quite some time. Are you aware of statistical data that would show that the shortage of Idaho doctors is based on their ability to earn in this state? **Mr. Limbaugh** replied they do not have any data that shows that there is an access problem concerning the number of doctors per capita within the state. **Senator Goedde** asked under your new schedule orthopedic surgeons are still going to be

receiving 70% on average over commercial payers. Your agency is suggesting Blue Cross or Blue Shield would pay an orthopedic surgeon \$100 per procedure and the workman's compensation would pay them \$170, is that correct? **Mr. Limbaugh** answered yes and also if you would look at the Ingenix Report a benchmark that they used was 298% above Medicare (low reimbursing). **Senator Goedde** asked why there needs to be some percentage over what the commercial payers would pay for procedures because people involved in the workman compensation system would inherently have some additional paperwork requirements and may not be as anxious to get back to normal health as someone who was injured off the job. Is the additional paperwork higher for specialists as for general practitioners? **Mr. Limbaugh** yes that it is his understanding that the paperwork and the dealing with workman's comp is much greater than standard patients under commercial. **Senator Goedde** asked if this additional paperwork load would be the same for general practitioners as it would be for specialists, yet your agency is only paying a general practitioner 13% over Medicare while some orthopedic specialists receive 298% over Medicare. **Mr. Limbaugh** stated that the orthopedic surgeon would be paid once, where the general practitioner would be reimbursed every time a patient is seen by him. **Senator Goedde** stated it appears that there are certain specialties that are still taking advantage of the system at the expense of the general practitioner. **Mr. Limbaugh** replied he would agree 100%. **Senator Werk** stated that the general practitioner is getting dinged at 13% and they are the physicians that act as the gatekeepers to keep individuals out of surgery. It seems disheartening to see the disparity. **Senator Broadword** asked if **Mr. Limbaugh** could give the Committee an idea of what the medical community thinks about this rule. **Mr. Limbaugh** responded that the orthopedic surgeons are fine on what we are doing and the physical therapists. There are concerns from medivac physicians, emergency room physicians, Idaho Medical Association about the facility versus non-facility reimbursements and the application of some modifiers. **Senator Goedde** asked why the change of definition in small and large hospitals from 50 to 100 acute care beds. **Mr. Limbaugh** answered this is part of a rule that was adopted last year and it is currently a temporary rule and we are just going forward with the pending at this time. It is a stop-gap, we are meeting with Genix very soon on some drafting for hospital reimbursement and there will be some changes. **Senator Broadword** asked if the critical access hospitals will be given a special designation in those negotiations? **Mr. Limbaugh** stated that in other states that has been negotiated. **Senator Werk** asked if it would please the Committee to hold action on this rule until the next meeting.

Molly Steckel, Lobbyist stated that the Idaho Medical Association does not oppose this rule approval. They do have some ongoing concerns to work over and issues such as facility and non-facility RVU's, anesthesia conversion factors and multiple surgery pricing methodologies. They expect to be able to work amicably going forward.

Woody Richards, Workman's Comp Exchange and Associated Loggers Exchange, stated they do not oppose this particular rule although we still are unhappy with the levels of the reimbursements. As

you recall from last year, the WCRI Study of all the states in the country indicated that Idaho was the 4th highest in terms of reimbursement levels. That is not something they can justify given the levels of per capita income in Idaho and the levels of income for Idaho businesses. **Mr. Richards** said they compete with businesses all over the world, many of which, do not even have to have workman's compensation insurance when they are paying such high levels of physician reimbursement that puts us at a competitive disadvantage. He said they will continue to work with the Idaho Medical Association and the Industrial Commission to try and bring these rates more into alignment.

Chairman Andreason reminded the Committee that they are piling up a lot of bills and need to get these rules finished up.

Chairman Andreason adjourned the meeting at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: January 31, 2008
TIME: 1:30 p.m.
PLACE: Room 117
MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu
MEMBERS ABSENT/ EXCUSED:
CONVENED: **Senator Andreason** called the meeting to order 1:32 p.m.

RS17485C1 Relating to Emergency Responder Death Benefits.

Senator Bastian stated that this RS deals with the Idaho Volunteer Fire and Emergency Services Association, their members and responders in service to the public. It is to provide a death benefit of \$100,000 to the Volunteer Emergency Responders. He introduced those who were in attendance in support of the RS. He then yielded the floor to **Kevin Courtney**, Star Fire Chief.

MOTION **Vice Chairman Coiner** moved to print RS17485C1. The motion was seconded by **Senator Broadsword**. The motion carried by **voice vote**.
Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

RS17434C1 Relating to Volunteer Emergency Responder Disability Benefits.

Senator Bastian explained that the purpose of this legislation is to amend the Worker's Compensation to provide minimum weekly benefits, based upon 67 percent of the average weekly state wage, for Volunteer Emergency Responders who are injured or disabled in the line of duty.

MOTION **Vice Chairman Coiner** moved to print RS17434C1. The motion was seconded by **Senator Bilyeu**. The motion carried by **voice vote**.
Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

RS17505 Relating to the Public Employee Retirement System.

Senator Corder explained that this RS seeks to financially dissociate the State of Idaho and specifically the Public Employee Retirement System of

Idaho (PERSI) from financial investments in a small subset of “highest offending” foreign companies that facilitate the genocide in the Darfur region of Sudan. Perpetrated by the Government of Sudan - a government heavily reliant on foreign direct investment to fund its military and militia allies - Darfur’s atrocities have already claimed as many as 200,000 lives and displaced more than 2.5 million. For the first time in history, the U.S. has accused a government of perpetuating genocide against its own citizens while the atrocities are ongoing. PERSI presently has holdings in 6 foreign companies subject to divestment, with a base market value of \$24.3 million (representing 0.22% of total PERSI pension funds of \$11.26 billion).

This legislation complies with the Sudan Authorization and Divestment Act of 2007 unanimously passed by the U.S. Congress and signed by President Bush on December 31, 2007. In passing this legislation Idaho will join 22 other states adopting divestment (15 states have thus far enacted the “targeted” divestment model followed by this legislation). The divestment movement, repeatedly condemned by the Sudanese government, has already prompted several major foreign companies operating in Sudan to either change problematic behavior or leave the country entirely. This legislation sends a clear message to the Government of Sudan and to offending companies that Idahoans will not financially support genocide. There is no impact to the general fund.

MOTION

Senator Davis moved to print RS17505. The motion was seconded by **Senator Bilyeu**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

RS17628

Relating to the State Personnel System.

Senator Corder explained that this legislation would remove the formula limiting the unused sick leave that is made available to state employees for medical insurance payments. Currently state and school employees are covered by a program to permit tax free payment of medical insurance premiums up to a maximum of one-half the value of sick leave at time of retirement. The state program provides an additional limit of 600 hours on the account accruals. This legislation would remove the 600 hour limit for state employees but the one-half the value of sick leave would remain in place. Employer contributions would remain at 0.65% of salary; however the amortization period would be extended by 12.1 years to pay off the \$14.4 million addition to the total liability.

Senator Davis said he is troubled by the fiscal impact because he doesn’t know that it says what the cost to the State is going to be.

Senator Corder responded that currently the State pays 0.65% of payroll into that fund. That would not change. What would happen is an extension to the number of years required to pay that. It extends it out to just a little over 17 years from the 12 that it currently is. The ongoing expense to the agency would not increase.

Senator Bilyeu asked if this includes early retirement as well? **Senator**

Corder answered that he sees no reason that it wouldn't. A retiree is a retiree, and if they had accrued benefits it would apply to those accrued benefits equally.

Senator Stegner stated he has some concerns about the cost of this, but he thinks it is valuable to print this and have it considered by the legislature to allow people to look at it and start getting some dialogue on it.

MOTION

Senator Stegner moved to print RS17628. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

BILLS

S1250

Relating to the Employment Security Law.

Bob Fick, Legislative Liaison with the Department of Labor, explained that this bill contains amendments to Idaho's Employment Security Law. Section 1 amends the statute that defines which employers are covered by Idaho's unemployment insurance program. Section 2 clarifies that the wages an individual must earn to qualify for unemployment insurance benefits must be earned from one or more covered employers. Sections 3 and 4 consolidate all the provisions related to mandatory transfers of experience rating accounts into one statute and specifies the factors that may be considered when determining whether a transfer of a trade or business has occurred. Section 5 provides a civil penalty for employers that collude with a current or former employee to file a fraudulent claim for unemployment insurance benefits. There is no negative impact on the State General Fund for Sections 1 through 4. Section 5 may increase the amount of civil penalties collected by the Department.

Senator Davis asked if an employer whose ownership changes to a new set of folks, who may implement new business strategies, are you willing to also provide sub part D in the reverse so that if someone continues and has new ownership, the Department should consider giving them a fresh start also? **Mr. Fick** deferred this to Don Arnold, Head of Collections Bureau. **Mr. Arnold** said there is a voluntary rate transfer section and a mandatory rate transfer section. The mandatory rate transfers are only taking place when the Department can establish that the ownership remains the same. Ownership for management or control are the factors there and it needs to be substantial.

MOTION

Vice Chairman Coiner moved to send S1250 to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

S1251

Relating to Real Estate.

Jeanne Jackson-Heim, Executive Director of the Real Estate Commission, explained that this bill pertains to licensee education requirements and policies. First, it would shorten the period of time to complete all prelicense education requirements from five to three years. Second, it would clarify that it is the Commission's responsibility to determine whether a continuing education course fits within the approved topic areas set forth in Rule 402. It establishes a maximum period of five years for real estate course providers to maintain student records, and adds language requiring certified instructors to adhere to the minimum teaching standards of the Commission.

Senator Stegner asked what kind of response or opposition they have had to the change from five to three years in the licensing time frames? **Senator Stegner** has had some communication from some of Ms. Heim's members that suggest that is an additional burden on them to increase the amount of education. **Ms. Jackson-Heim** answered the Commission has received one comment from an individual who is not in favor of this. They have almost 13,000 licensees, so it is difficult to get 100% consensus. This began as a global discussion with the Realtor Association, and they spent a significant amount of time in a work group comprised of leadership and education committee members of the Realtor Association and of Commissioners and staff at the Real Estate Commission, looking at the issues, trying to find what they felt would provide the best education for the licensees and applicants. This is one of the recommendations that came from that work group. They felt five years was too long a time period because there may have been law changes within that five years, that is not uncommon. If someone had not taken that class for five years, they may not have the most accurate information. **Senator Stegner** said that Ms. Jackson-Heim is representing to this Committee that the opposition has been very minimal and support through a broad representation of the industry has been very supportive. **Ms. Heim** said personally that is her experience.

John Eaton, Idaho Association of Realtors, confirmed what Ms. Jackson-Heim said concerning the process the Commission used to arrive at these licensee education requirements and policies. He stated that the process took almost two years and have gone through the entire Board of Directors discussing this, so he is confident they have buy in across the industry. Regarding the change of the period of time to complete all prelicense education requirements from five to three years, they found that the majority of people who failed the tests were folks who had taken the classes more than three years earlier, so that is how they arrived at that three year requirement.

Senator Broadsword asked if they are adding any additional course work to the licensee or simply shortening the period of time they have to take the test? **Mr. Eaton** said they are not adding any course work. The requirement is four classes for a brokers license and an additional class if you want to run your own agency.

Senator Bilyeu asked them to review the education requirements for both a realtor and/or a broker. **Ms. Jackson-Heim** answered that sales associates are required to take 90 hours of prelicense education

consisting of two 45-hour modules and then they may sit for the sales associate exam. To obtain a brokers license they must first be a sales associate, and there is a minimum additional 90 hours of broker prelicense education required. Currently the Commission requires a brokerage management and a real estate law class and two additional electives and those courses must be a minimum of 20 hours each. There is leeway in what those electives can be. For example, the Realtor Association has a program called the Graduate Realtor Institute. The completion of that program will provide an applicant with all the prelicense they need for their brokers license with the exception of the brokers management, which is a required course for us. A person who wants to run his own office currently takes a Business Conduct and Office Operations course which is currently four hours and is included in the Brokerage Management course.

Senator Cameron asked is it a requirement that these courses be given in person versus online courses? **Ms. Jackson-Heim** answered that it is not a requirement that they be given in person, and they do have some that are offered by correspondence and online. Primarily they are offered in live format because of the length of the courses and they find that it is harder for people to put together an online course of that length. So, the issue is that they haven't had a provider who has taken the time to set that up as an online course. The Commission doesn't do that, many of these courses are offered by the private sector. **Senator Cameron** said one of the concerns he heard expressed was that a more rural agent would have a more difficult time getting to a live class. Have you had that concern expressed from any of your members? **Mr. Eaton** said he had heard that concern probably from the same individual Senator Cameron heard it from. The Board discussed it and did not feel it was something that would stop him from moving forward. There are several ways to get these classes for brokerage license. The Idaho Association of Realtors offers their class all over the State at least two or three times a year. They can get all their training except one class in that one setting. There are other providers around the State that do that as well. If the individual doesn't have local access they may just have to go somewhere for three or four days. All the classes needed are offered within Idaho, they don't have to travel to another state as in some other professions. **Ms. Jackson-Heim** added that the Commission has just added some options for people for courses they can take for their broker prelicense. In the past it was a narrowly defined list. Now they have added a designation for commercial brokers and those courses would count toward the broker prelicense requirements. Applicants who have taken the broker prelicense course in another state can submit that to the Commission for consideration of broker prelicense credit and they are accepted on a regular basis on special consideration.

MOTION

Senator Broadsword moved to send S1251 to the floor with a do pass recommendation. The motion was seconded by **Senator Bilyeu**. **Senator Davis** stated his problem with this bill is with the Instructor Teaching Standard, which was created by rule. The Committee reviewed those rules and approved them. The rule says they can't tell dirty jokes or show slides that are inappropriate, and he agrees that should be the standard but doesn't think it should be in the rule. That is a management rule and if

the Commission has concerns about that they can speak to it and manage it. This has bothered him and seems a little more than what we should have to put in our Idaho Procedures Act. He said he plans to vote for this bill, but wanted to share these comments. **Senator Broadword** asked if it is his opinion that it should not be in Statute either? If this bill is passed it will be in Statute, not just in the rule book? **Senator Davis** said he has no problem saying that there will be minimum teaching standards established by the Commission and established by rule. That is appropriate. He just doesn't think this one part should be in the rule. **Ms. Jackson-Heim** said it was duly noted and the message received. **Senator Bilyeu** said that Senator Davis' point is a very good one, and she wonders if there is any way they can take this bill back and remove that sentence? **Senator Davis** said it may be appropriate to hear from the sponsor to find whether that last sentence is intended to be a soft pedaling of the prohibited conduct (dirty jokes, dirty stories) or if there is some other target that is being hit that he doesn't understand. **Ms. Jackson-Heim** gave an example of an instructor they had last year who was diligently flirting with several young ladies in the class. Some of these ladies were very offended by that. At that time there were no teeth in the license law to tell that instructor that he could be disciplined or his certification withdrawn for behavior of that type. All they could do was tell them to stop, but no way to make them stop. That is the genesis of this. Last year this same language was added under the Provider Certification section of the law. This year they are adding it under the Instructor Certification requirement. It is to make it uniform with what they have existing in their law. **Senator Davis** said merely because we did it wrong somewhere else isn't a basis for continuing to do it wrong. He said he appreciates that these are policing problems that exist, but can't there be a remedy that you just won't certify him as an instructor? **Ms. Jackson-Heim's** point is that they can't. **Chairman Andreason** said he is convinced that there is an answer to this within their department. **Ms. Jackson-Heim** replied that upon the advice of their attorney they did not have any recourse. They do not require all instructors to be certified, they only require their prelicense instructors to be certified. This person was a prelicense instructor. After they told the provider about the behavior, he was terminated. He then went to a different provider who hired him not knowing about this. He was later terminated by this provider. He then became his own provider. They did not have any way to stop him with their law because he met the requirements for certification that are contained in their law. They had nothing in their law to withdraw certification. The only recourse they had to withdraw certification was if an instructor had been convicted of a felony or if they had not paid their renewal fee. This came from the Real Estate Educators Association guidelines.

Vice Chairman Coiner said it seems as if the Committee is getting a little far from this legislation. The Committee is not finished looking at rules and he feels the Committee can discuss this rule again outside the time today. If this bill meets everyone's approval, we're getting at two separate items here. **Senator Davis** said Senator Coiner is correct and we need to move things along. He thinks a better effort can be made than this rule and with a second effort they will see better language both in this

bill and perhaps find a way to address the rule. He would rather send it to the amending order and give the Real Estate Commission a chance to look at that sentence and see if they can come up with a better way to approach the target they're trying to hit and go from there. **Senator Stegner** said he thinks the last sentence is a little vague, but is not anxious to have this in the amending order. He would rather pass this out and ask the Commission to address that last sentence and see if they can be a little more specific. That would take care of the bill and would not require the Committee to go into the 14th Order. Likewise, a reconsideration of the current rule the Committee passed dealing with prohibitive conduct, it is certainly the prerogative of this Committee if we have a motion to that effect. So, he would encourage the Committee to move forward on the vote, unless there is a motion to send it to the amending order. **Senator Cameron** said the problem is the wording in the rule, not the wording in the bill. If the wording of the rule wasn't already in your head and you read the last sentence in the bill, there would be nothing wrong with the last sentence. It is vague on purpose because you can't describe every detrimental activity a person might have. It is one of those things that you know when you see it. He said he doesn't see anything wrong with the wording in the bill. Could the rule be improved? Absolutely. Almost every profession he knows has a moral turpitude section that they are required to uphold. He said he doesn't see any problem with the bill and he thinks the Committee can revisit the rule if it needs to at another time.

Chairman Andreason called for a vote on the motion. The motion carried by **voice vote**.

Senator Davis moved to reconsider at a future date Docket 33-0101-0702, Rule 500.08, and ask that it be on the agenda at the discretion of the Chairman. **Ms. Jackson-Heim** asked, for clarification, does that mean that this rule will come back before the Committee and that is the problematic sentence? If so, she asked what she needs to do? **Senator Stegner** answered that the bill has passed out of Committee and is going to the floor as is. If the Commission hears the message that this Committee would prefer some improved language to that last sentence and chose to take that up over the next year, that would be appreciated. **Ms. Jackson-Heim** said the message was well received and they will do so.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

S1253

Relating to the Uniform Securities Act.

Marilyn Chastain, Securities Bureau Chief, Idaho Department of Finance, explained that this bill is to amend the Uniform Securities Act to correct statutory language, delete an obsolete provision, and amend the requirements for the Idaho Code, Section's 30-14-202(11) exemption. The bill proposes to remove the language prohibiting the use of general solicitation or advertisement as well as the prohibition on the payment of commissions to those selling securities in these transactions. This

language creates problems for several local issuers and the Department believes it is appropriate to remove the additional conditions.

MOTION

Senator Cameron moved to send S1253 to the floor with do pass recommendation. The motion was seconded by **Senator Davis**.

Senator Bilyeu asked Ms. Chastain to elaborate on the two businesses she referred to who could not operate because of this? **Ms. Chastain** answered that some businesses where part of their business is to offer a security that includes notes that are secured by a Deed of Trust or a mortgage. There are also some transactions where an individual might be offering promissory notes that are secured by the inventory of their business. Those transactions, if sold as a unit - the notes together with the underlying security interest -the Department believes that is an appropriate kind of transaction to be exempt from the securities registration requirements.

Chairman Andreason called for a vote on the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

S1254

Relating to the Uniform Securities Act.

Ms. Chastain explained that this bill will amend the Uniform Securities Act to allow the Department to seek recovery of its investigative and legal costs when civil lawsuits are filed.

Senator Davis asked if it says that you can order the payment of costs only if you're the prevailing party, or would it apply if you've made an investigation including legal costs and you decided not to do anything after that investigation. **Ms. Chastain** answered if you look at sub B it is talking about the relief that is available. So that is what the court may order, so the Department has to have prevailed on a civil enforcement action. They wouldn't be before a court if they had only initiated an investigation. **Senator Davis** said that is clearly within the spirit of what this code section says. He would have preferred to say that in the event you are a successful party, or the court enters an order sustaining the position; instead, it says in the litigation you can ask the court to order the payment. The court may decline it, but the Commission may, although they are prepared to dismiss the case or concede the points, still think the Department is entitled to an award of legal fees and costs for having pursued the action, not necessarily having prevailed in the action.

Senator Cameron asked what protection does the person being investigated have? If there is to be a more aggressive Department, what protection does the person being investigated have in the investigative process? Can they come against the Department if they're investigated wrongly and the person has to go hire legal counsel, is there a right or a privilege that is commensurate with what you're asking here? **Ms. Chastain** replied that certainly individuals who believe they have been

harmful by an action taken by the Department can file a notice of tort claim and seek recompense. **Senator Cameron** asked why is it necessary to have this in the statute for the Department when there does not seem to be the same forms of protection offered for the person being investigated?

Senator Davis stated that generally the courts are not going to grant award fees. The merit he is finding in Senator Cameron's argument is why not accept by mutuality this paragraph. Why is it we are willing to say that the Department gets to have fees if they are entitled to them as a matter of law, but if the case is dismissed or the court were to say the Department was wrong, why doesn't the person being investigated have the same right? This is a one way street and only the Department gets to ask for an award of attorney's fees. **Ms. Chastain** said that *subsection b* in the Statute only addresses money that is available to the Department. In any civil action, whether its an action brought by the Department or any civil lawsuit, the Idaho Code already provides certain remedies, including attorney fees. The relief that the Department is allowed to obtain is somewhat unique. It differs from regular civil action. The Department is limited to the remedies that are set out in the statute. They can get injunctions and restraining orders, civil penalties of certain amounts. Because it is a State action, the legislature has decided to address what they uniquely can get. They cannot ask for relief from a defendant that is not listed in the Statute.

Senator Cameron said that he personally doesn't have a problem with the Department seeking relief. If someone has done something inappropriately and the Department has had to take action, then along with the penalties and administrative action, they should reimburse the Department. What he is having trouble with is what happens if the court rules that the Department is wrong and this person didn't do anything wrong. The person is in an incredible position already with filing a suit against the State. This section may not apply to the person being investigated, but he would still like to see somewhere that they have equal footing, that if the Department has overstepped their bound, they can in turn tell the Department they overstepped and now must pay for this person's legal fees. **Ms. Chastain** said she thinks at the conclusion of an action brought under this, if the court thought the Department had pursued an action frivolously or without a reasonable basis in fact or law, attorney fees could be awarded against the Department. This is just saying the Department can't bring breach of contract action or other kinds of civil actions.

Senator Davis said that if the defendant in a civil action has that remedy under the general civil provisions, then the same argument would be true for the Department. Since the Department feels there is a need for this for their benefit, then it makes one wonder if the general civil action provision really provides a remedy. A better bill would be this plus reciprocal language that says if the Department fails there should be a plain remedy other than a tort claim which is very difficult to do.

MOTION

Vice Chairman Coiner moved to hold S1254 in Committee to investigate

this further to come to a conclusion and readdress it at another Committee meeting. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Ms. Chastain said that the Committee's point is well taken. She asked for clarification on how the Committee would like her to proceed at this point. **Senator Davis** replied that she should inquire of one of the Deputy Attorney General associated with the Department.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

Chairman Andreason turned the meeting over to **Vice Chairman Coiner** for the rules review.

RULES

DOCKET NO. 28-0203-0701

Rules of Idaho Regional Travel and Convention Grant Program

Vice Chairman Coiner told the Committee to ignore this rule on the agenda. It has been solved.

DOCKET NO. 07-0106-0701

Rules Governing the Use of National Electrical Code (Pending)

Stephen Keys, Deputy Administrator, Division of Building Safety, explained that this rule adopts the 2008 National Electrical Code (NEC), with significant amendments that resulted from discussions with affected industries. The requirement for arc-fault circuit interrupters has been limited to 120 volt circuits supplying outlets installed in dwelling unit bedrooms. The 2008 NEC would require protection on all 120 volt circuits. Significant changes were also made to the bonding requirements for swimming pools. The electrical board reinstated bonding requirements contained in the 2002 NEC, as the board felt these requirements were more easily understood and accepted by swimming pool installers and electricians. In discussions with manufacturers they have assured the Division that cost in the average house will be less than \$50. They have no control over what the vendor sells them for.

Chairman Andreason moved to approve 07-0106-0701. The motion was seconded by **Senator Stegner**. The motion carried by **voice vote**. **Senator Broadsword** voted nay.

DOCKET NO. 07-0301-0701

Rules of Building Safety (Temporary)

Mr. Keys explained that this rule resulted from the adoption of the 2006 International Building Code by rule last year. The local jurisdictions requested a delay in implementation of the codes to January 1, 2008, to facilitate budgeting and education of their staffs.

Senator Davis asked if it is the intent to forbear approval of the rule until after the RS is printed and passed both bodies, or is it the intent to have

the rule pulled? **Mr. Keys** said the net effect of this rule has passed. This rule gave local jurisdiction until January 1 to enforce the 2006 version of the Code as an extension from March of 2007. It is mute. **Senator Stegner** said his understanding is if the Committee doesn't approve the rule it will be up to other considerations. So it would be far easier, even though it's a mute point, to approve the rule.

MOTION

Senator Stegner moved to approve 07-0301-0701. **Chairman Andreason** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
07-0207-0701**

Rules Concerning Uniform Plumbing Code (Pending)

Mr. Keys explained that this rule defines the circumstances where sidewall venting may be utilized, and allows for limited usage of air-admittance valves where traditional venting methods are impractical. He introduced Milford Terrell, plumbing board member, who will address the part of this rule that exempted plumbing contractors from the application of civil penalties.

Mr. Terrell, Plumbing Board Member, shared that he has been very outspoken concerning rules and regulations regarding his industry because he takes a great interest in his industry in the State of Idaho. **Senator Davis** asked why should there be a different standard for electricians than for plumbers? **Mr. Terrell** responded that he doesn't know why they need to have the same rules. The electricians live under different rules than plumbers. He said he doesn't know what the electrical rules are, he only knows the plumbing rules. **Senator Davis** said he doesn't believe anyone has concerns with any of the rules that have been suggested other than the civil penalty question. It seems a little self-serving to have the plumbing board say they don't want civil penalties, we'll just jerk their license altogether. **Senator Davis** said what he is hearing, the interim step of providing a civil penalty may be a better mechanism. His understanding is that some of the other professions address it. It isn't that one is electricity and one is water, it is the concept of how you deal with and administer handling problems. It seems the civil penalty is something that should be kept in place. **Mr. Terrell** said the issue is that they already have a lot of rules and fines and read some of the penalties that already exist in his industry's rule book.

Vice Chairman Coiner said that there appears to be a problem with the agenda. The Docket No. on the agenda is not the Docket No. the Committee is discussing. **Senator Broadsword** said the Committee is discussing **Docket No. 07-0207-0701** Civil Penalties on page 39-41.

Senator Broadsword asked how does this differ for the HVAC people that are also under this rule? **Mr. Terrell** said he doesn't know because he only knows what pertains to the plumbing industry.

Senator Davis responded much of what Mr. Terrell is reading comes from the criminal code. Those are if some criminal prosecution is brought. What he understands is from this administrative rule is that the Board or the Division has the authority to issue civil fines without having to go through this aggressive criminal mechanism. **Senator Davis** said he fears

the plumbing industry might be doing if they repeal this rule they will encourage criminal prosecution of plumbers and the taking away of licenses.

Senator Stegner said this Committee relies on experts from all the licensing bureaus and boards to tell it what are good rules. The Committee generally doesn't interfere, but does have the responsibility to review the rules. This is perceived to be a self-serving effort by an industry that is supposed to be policing itself to relieve themselves of a nuisance of civil penalty. The Committee finds value in the fact that the regulatory people have the authority to issue those interim step penalties, so they don't have to start complete licensing revocation processes or criminal processes. The Committee thinks that is of value. They understand from testimony that it is seldom used and hasn't been used against plumbers for some time. If you were here as a plumber saying the Department was heavy handed imposing those fees we would be more likely to agree with the plumbers. **Senator Stegner** said Mr. Terrell is asking the Committee to believe that this is unnecessary for plumbers when all the other bureaus have this same general statute of civil pursuit of offenders. Why should the Committee favor one industry when it seems self serving? **Mr. Terrell** said it may be self serving, but the ramifications in the plumbing rule book make it very plain that if the inspectors do according to this book they will get our attention. If the contractor gets only fines, after awhile they may build it into the job and pass it on to the consumer. Mr. Terrell wants the fact that they can nail the contractor with only two citations and then it would advance to taking the license. **Senator Stegner** said if the Committee eliminates civil fines for plumbers all other industries will want the same.

MOTION

Senator Stegner moved to overrule this docket. **Senator Davis** said he isn't sure that we've identified the right rule. **Senator Stegner** said he questions whether they can do anything until the correct rule is posted on the agenda and then bring it back. There was no second.

**DOCKET NO.
17-0208-0702**

Miscellaneous Provisions

The Committee adjourned without discussing this Docket No.

ADJOURNMENT

Chairman Andreason adjourned the meeting at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's office until the end of the session. After that time the material will be on file in the Legislative Services Library Annex 5th Floor.

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

- DATE:** February 5, 2008
- TIME:** 1:30 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- GUESTS:** See attached sign-in sheet.
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- MINUTES:** The meeting was called to order by **Chairman Andreason** at 1:31 p.m. **Chairman Andreason** stated that today we have minutes from January 10, 17 and 22, 2008.
- MOTION:** **Senator Broadsword** stated she had read the minutes from January 10, 17 and 22, 2008 and found them all to be in order and would move the Committee accept them as presented. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**
- Chairman Andreason** then turned the meeting over to **Vice Chairman Coiner** for rules review.
- Vice Chairman Coiner** recognized **Stephen Keys, Deputy Administrator, Division of Building Safety** to address the committee regarding Docket No. 07-0207-0701
- DOCKET NO: 07-0207-0701** **Rules Governing Civil Penalties**
The proposed change is needed to eliminate confusion and misunderstanding regarding whether a provision for civil penalties applies to licensed plumbing contractors.
- MOTION:** **Senator Stegner** moved to reject Docket No. 07-0207-0701. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**. **Senator Stegner** asked if **Mr. Keys** was present. **Vice Chairman Coiner** answered that **Mr. Keys** was testifying in the House dealing with this same problem. **Senator Stegner** stated that he would like to make a comment to him what seems to be the infrequency of use of civil penalties with plumbing contractors.
- DOCKET NO:** **Rules of Idaho Regional Travel and Convention Grant Program (Rule**

28-0203-0701

Subsection 2-22-02E)

Dennis Stevenson, Administrative Rules Coordinator, stated that a procedural error was made on rule subsection 2-22-02e and not all the correct text was put into the docket. The Committee approved a motion to reject rule subsection 2-22-02e that is problematic but if 2-22-02e is removed subsection d does not make sense. Rejecting subsection 2-22-02 in it's entirety will allow us to come back with a temporary rule to fix this subsection.

MOTION:

Senator Davis moved to reject subsection 2-22-02e in its entirety. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Tom Limbaugh, Commissioner, Industrial Commission**, to the Committee to present rule 17-0208-0702.

**DOCKET NO.
17-0208-0702**

Miscellaneous Provisions

Senator Goedde asked if this docket and the change in the proposed conversion factors to make it cost neutral to the employers? **Mr. Limbaugh** stated that **Senator Goedde** was correct. **Senator Goedde** asked that if the table is cost neutral and they are rewarding a group of physicians at a higher than regular rate aren't they doing that at the expense of the general practitioners? **Mr. Limbaugh** answered that the different surgery medicine groups are based upon actual reimbursements of the years from 2004 through 2006 and surgeons were being paid previously at a higher rate. **Senator Goedde** asked **Mr. Limbaugh** to explain the negotiation process. If surgeons were paid too much to start with and you lowered it too much you are now bringing it back up to level that is acceptable to the surgeons and that level is still several times what general practitioners are getting in relation to their Medicaid reimbursement rate. Could you show me how this action would be characterized other than one group taking from another? **Mr. Limbaugh** answered in several other states the department have seen that surgeons are receiving a higher reimbursement as to Medicare than general practitioners. **Vice Chairman Coiner** asked if this is your final attempt at this rule? **Mr. Limbaugh** replied that we started this process in 2002 with constituents and did not get anywhere for 2 years and then in 2005, House Bill 331 passed which created Resource Based Relative Value Scale as the standard to setting medical fees for services provided to injured workers. We have been working on the rule this long we are going to continue to work on it. **Senator Werk** stated that there should be more equity for primary care physicians within the system.

MOTION:

Senator Goedde moved to approve Docket No. 17-0208-0702. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

**DOCKET NO.
33-0101-0702**

Rules of the Idaho Real Estate Commission

Vice Chairman Coiner stated that the Committee had a previous discussion that they would readdress subsection 500.08 Prohibited Conduct that appears on page 230.

MOTION:

Senator Davis moved to reject subsection 500.08, Prohibited Conduct.

The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

Senator Davis stated this is the dirty joke rule and it is his understanding that the Committee accepted the rule. This is not in any fashion intended to otherwise modify that motion; but we suggest this subsection 500.08 is more of a management issue then something that needs to be by rule.

Vice Chairman Coiner stated that this brings the Committee to the end of the rules. The Division of Human Resources and Personnel Commission Docket No. 15-0401-0702 will be asking the Committee to respectfully reject this rule.

Vice Chairman Coiner turned the meeting back to **Chairman Andreason**.

Chairman Andreason welcomed **Pat Collins, General Counsel, Idaho Bankers Association** to the Committee to present RS17641.

RS17641

Relating to the Protection of Credit Reports

The purpose of this bill is to allow consumers to freeze access to their credit reports as a means to prevent fraud and identity theft. By freezing the credit report anyone attempting to obtain a credit report on a consumer will be unable to get a report. This will make it more difficult for fraudulent use of stolen creditors identity. If after freezing their credit report a consumer wants to obtain credit, they can temporarily or permanently remove the freeze that he placed on his account. More than half of all the states have passed similar legislation and discussions began last year for Idaho.

Vice Chairman Coiner asked does this freeze the three credit reporting agencies or do you have to apply for the freeze with each of the agencies? **Mr. Collins** responded that you have to deal separately with three agencies.

MOTION:

Senator Davis moved to print RS17641. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

Senator Stegner asked if **Mr. Collins** would highlight the differences between this legislation and other states'. **Vice Chairman Coiner** asked how do we as a state come into effecting the credit agencies as opposed to the Federal Trade Commission laws that govern them. **Mr. Collins** replied these three credit reporting agencies are controlled by the Federal Trade Commission and they are also covered by the Fair Credit Reporting Act under Federal Law. The Fair Credit Report Act does not preempt this sort of legislation at the state level. There has been talk of Federal legislation in this area but so far nothing has been enacted. This is an area in which the states can operate to regulate the activities of credit reporting agencies as it affects their own citizens.

Chairman Andreason welcomed **Aaron Hedges, Student at Arts West**, to the Committee to present RS17734C2.

**DOCKET NO:
RS17734C2**

Relating to Homeowner Association & Member Relationships

This bill defines the basic relationship between homeowner associations

(HOAs) and homeowners, yet would only be the most fundamental law and not limiting to HOAs in terms of their ability to govern and maintain property values. This legislation would ensure that federal and state open meeting acts be applied to HOA meetings, minutes be kept of meeting proceedings and that members have access to those minutes.

Senator Goedde asked about line 37 and 38 on the first page of the bill where it speaks to matters discussed in executive sessions shall be placed on the agenda of the next scheduled meeting of HOA or the board. He inquired if you are discussing litigation in this executive session would you really want to reveal this privileged information in a subsequent open meeting of the HOA. **Mr. Hedges** said they wanted to make sure that you can have a closed meeting and discuss certain topics without having the open meeting law apply; but if you were to make a decision that would be put on the agenda of the next open meeting so the public could be present for the actual vote. **Senator Goedde** stated he did not think you could make decisions in executive sessions to bring back to an open meeting.

Chairman Andreason stated that he would like to take this opportunity to commend this class for the many hours that they have worked on this project. We don't often get this type of presentation from a class and it is very refreshing.

MOTION:

Senator Werk moved to print RS17734C2. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Senator Davis stated unincorporated associations do not have organic documents. Senator Davis asked if between now and the final hearing, the sponsors of the bill would be open to a discussion on some alternative language including the section that **Senator Goedde** referenced in his previous comments.

Chairman Andreason welcomed **Marilyn Chastain, Securities Bureau Chief**, to the Committee to present S 1255.

S1255

Relating to the Uniform Securities

These amendments are in response to a recent Idaho Supreme Court decision that concluded the Department of Finance did not have the authority to review the books and records of broker-dealer agents (stockbrokers). This same language would apply to investment adviser representatives. The proposed changes provide the Department of Finance with this authority.

Senator Cameron said as he understands brokers are required to maintain a certain level of records and they are required to allow access to those records for audit and compliance. **Ms. Chastain** replied that the statute does not require a registered representative to maintain any records that the brokerage firm has the obligation to maintain records. If examiners walked into a firm the stockbroker would be required to produce the documents that the broker dealer firm is required to maintain. In the Supreme Court case they asked for a copy of this reps customers with addresses and phone numbers and the court ruled that is not a

record that the statute requires a rep to maintain. **Senator Cameron** stated in his training he was instructed to keep records and blotters of anyone who calls in to make an investment. Is the department reaching further with these amendments? **Senator Stegner** asked in the wording of this document it states that you would remove records from the rep and it also states that you can remove or copy. **Ms. Chastain** responded that it is not the bureau's intent or practice to leave a firm without records to conduct business and if the bureau reworded removing originals in those instances that have been described as long as they leave copies with the reps. **Senator Stegner** stated there should be some requirement to return the records on a reasonable basis that the language should not be open ended.

MOTION: **Senator Goedde** moved to hold S1255 in Committee. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Bob Fick, Legislative Liaison, Department of Labor** to the Committee to present S1256.

S1256

Relating to the Department of Labor

This legislation establishes the Idaho Career Information System within the Idaho Department of Labor. The services and products provided by the Idaho Career Information System are critical components of the Department's employment service and its workforce administered by the Department will create efficiencies and reduce the system's costs. The Department will update the Idaho Career Information System's computer technology and improve its access to information available through the Department's Research and Analysis Bureau. Locating the Idaho Career Information System within the Department of Labor will allow the Department to promote the system through Department initiatives, thereby providing better public access to career related information at the department's 24 statewide local offices.

Senator Stegner asked **Mr. Fick** to clarify his presentation. **Mr. Fick** answered that since 1980 the Career Information System has been providing information over the internet on career and education. This system provides the individual seeking information on specific occupations the training that will be required, where training is available, how much the occupations pay and the future need for the occupations in the workforce. Job seekers and students in middle school and high school use this website as they access careers and job information. This bill establishes this Career Information System in law. It has been been operating under an executive order. While operating under executive order last fall the system was transferred from the Professional Technical Education to Department of Labor and it allowed the department to reduce their staff from 9 to 4 individuals supporting the system. **Senator Stegner** asked why did the Department get so efficient with the transfer that they could reduce the staff by half? **Mr. Fick** stated that he would like to defer the question to the administrator of the program, **Christine Stoll, Administrator of the Idaho Career Information System**, Ms. Stoll stated that over the past six months they have been able to make use of many efficiencies: 1) programmers have been putting together a new system which has replaced workloads to 1-1/2 staff members and 2) the

efficiencies are also coming from talented computer staff that the department has never been able to afford. **Senator Davis** asked if it isn't better to deliver the information through Professional Technical Education? There seems to be a public policy trade-off by moving it from a to b. **Mr. Fick** responded that because of the technical expertise of the Department of Labor that the information is more readily available to anyone in the state than primarily market of high school and middle school students. **Senator Davis** asked would there not be a trade-off that Professional Technical Education was designed to deliver this information and they knew where to get it into the hands of the user? The Department of Labor may be able to build it, but you do not know how to sell it? **Mr. Fick** answered what the Career Information System does is it provides information to individuals about what Professional Technical Education provides, what junior colleges and four year colleges have to offer, what special training courses provides, what the work force investment act course provides. It then connects this information to what kind of occupation the student or adult might be needing in their career development. **Senator Cameron** said the Career Information System has been around for awhile and has had some financial struggles. How does putting it under the Department of Labor improve their financial standing according to your fiscal impact which gives us a \$214,000 savings? **Mr. Fick** replied that the department fiscal impact reflects : 1) savings in the reduction of the staff because of the efficiencies created by becoming a part of the Department of Labor, and 2) career Information staff are marketing more intensely their product and developing new products. If there is additional revenue needed they would be able to use the administrative tax to further subsidize, since it is a critical part of the job search processes. **Senator Davis** asked on page 2, lines 17 and 18, what does perpetually appropriated mean, and why are we seeking that in this legislation? **Mr. Fick** replied this does not change the perpetual appropriation of the Department of Labor that is currently the law. The reason that the Department of Labor has perpetually appropriated the budget is because the U.S. Department of Labor appears to be unable to forecast how much money will be available because the amount of the grants provided to operate fluctuate up and down and also are driven by the economy. **Senator Davis** asked why have it apply to the Career Information System? Are they currently a perpetually appropriate department? **Mr. Fick** stated the reason for the perpetual appropriation is there is no funding history and they do not know how much traditional support would be needed directly from the department to maintain operations. This allows the department to provide support over and above the revenue generated by the sale of the product to maintain the current information system. **Senator Cameron** stated the very reasons you listed is why we don't give agencies perpetual appropriations. The fact that we do not know what kind of revenue the Career Information System will generate is no excuse for not setting up a budget and coming before the legislature for funding. I will not support perpetual appropriation for the Career Information System. **Chairman Andreason** asked how long has the Career Information System been perpetually appropriated? **Mr. Fick** answered the Career Information System has been appropriated in the past.

MOTION: **Senator Werk** moved to hold S1256 in Committee. The motion was seconded by **Vice Chairman Coiner**.

SUBSTITUTE MOTION: **Senator Davis** moved to send S1256 to the 14th Order for amendment. The substitute motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

S 1311 **Relating to the Department of Labor**
This legislation is a federal conformity bill. There are two pieces to this bill: 1) confidentiality of unemployment insurance information, and 2) ensuring that unemployment insurance claimants who are in job training participate in the training. If they don't, the department classifies them as able and available to work to continue to receive an unemployment check. Confidentiality allows the exemption from the open records law from unemployment insurance information but allow for the information to be provided under specific circumstances. It imposes a penalty for unauthorized release of the information and provides who specifically is covered by the confidentiality provision. These provisions are required by the U.S. Department of Labor to be adopted and if they are not, there could be a penalty of the reduction of operating funds.

Senator Cameron said he wanted to make sure he understood the reference to third party or any employee thereof on page 8, line 6. He asked if this is strictly in reference to disclosing information. it is not referencing any other provision? **Mr. Fick** answered this is only about the disclosure of information that has been legally provided under an agreement to the individuals identified. The disclosure of that information to others who are not covered by the confidentiality agreement is prohibited.

MOTION: **Senator Cameron** moved to send S1311 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Jeanne Jackson-Heim, Executive Director, Real Estate Commission** to the Committee to present S 1257.

S 1257 **Relating to Real Estate**
The bill before you is the Real Estate Commission agencies annual update legislation. There are two changes in definitions contained in our license law. We would propose to add a definition of "business day" because that term is referenced but presently not defined in our license law. The proposed definition corresponds with the definition commonly contained in Idaho Code. The second is a date change to update the definition of the Real Estate Settlement Procedures Act. The final change involves the codification of the Commission's educational certification fees within the fee section of the license law (54-2020). Certification fees are referenced in the provider, instructor and course certification sections of the license law, and the Commission currently collects these gfees in these exact amounts. No fee increase is requested; however, there would be the ability to lower the fees by rule if the change is approved.

MOTION: **Senator Broadsword** moved to send S1257 to the floor with a doe pass recommendation. The motion was seconded by **Senator Cameron**. The

motion carried by **Voice Vote**.

Chairman Andreason adjourned the meeting at 3:14 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 7, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Goedde, Broadsword, Werk, Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:31 p.m.

Chairman Andreason then turned the meeting over to **Vice Chairman Coiner** for rules review.

Vice Chairman Coiner welcomed Judie Wright, **Acting Administrator, Division of Human Resources**, to the committee to present Docket No. 15-0401-0702.

DOCKET NO. 15-0401-0702 **Ms. Wright** stated that the Division of Human Resources respectfully request to withdraw our rules from the Committee and look forward to resubmitting another set of rules next year.

MOTION: **Senator Werk** moved to reject Docket No. 15-0401-0702. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** introduced **Jody Olson** who was appearing before the Committee for approval of his re-appointment to the Public Employee Retirement System (PERSI) Board for a term commencing July 1, 2007 and expiring July 1, 2012.

Mr. Olson advised that he was honored that he was appointed by Governor Otter for another term and if confirmed he would be proud to serve.

Chairman Andreason asked **Mr. Olson** how long he had been on the Board? **Mr. Olson** replied that he had originally been appointed by Governor Andrus in 1986 and it was a very different time. We had \$1 billion in assets and \$2 billion in liabilities. It was forecast that it would

take 35 years before they would pay off the unfunded liability. Many retirees were operating at 70-80% of the value of their money at the time that they retired. It had been eroded by inflation and investment returns had not kept up. There was an interim committee chaired by then Legislator Phil Batt who developed some boundaries, goals, time lines and rules for us to accomplish and Governor Andrus implemented these recommendations by appointing individuals from the private sector. Jerry Rudd, Senior Vice President of Albertsons, knew a lot about pension funds not only corporate funds but Taft Hartley Funds. **Mr. Olson** said he had chaired the Pension and Profiteering Plan at Trus Joist and they started hiring people like Bob Maynard and promoted Alan Winkle. They terminated managers and hired others in their place and they have had a great success over 20 years. They now have \$12 billion in assets and \$12.3 billion in liabilities. They were 100% funded at year end and now are in the 95-97% range. Contribution rates are less than they were 10 years ago, both for employees and employers. All of our retirees have a 100% of purchasing power as the day that they retired. **Chairman Andreason** stated he understood that they made 20% last year and what does this year look like? **Mr. Olson** corrected it was 20.3% and this year they are down 5% for the month, fiscal year about 1-2% they think they will finish the year at 95%+ funding ratio and think the markets will correct. What they really do is minimize the downside. **Senator Werk** asked that the informational paperwork with **Mr. Olson's** address be corrected because the information that is sought is the personal address and not the business address and it is always nice to have the correct information before we vote on an appointment.

Chairman Andreason thanked **Mr. Olson** for his attendance.

RS17713

Relating to Liens and Foreclosures

Senator Werk stated that there have been a dramatic increase in foreclosures across the country and Idaho has not been immune. There was a woman in Northern Idaho this year that was duped out of her home by a foreclosure scam operation. This bill does not regulate or restrict any business practices. The legislation provides that when you are in foreclosure if you enter into a contract that the contract has to be in writing. Foreclosure scam artists have been telling individuals that they can rescue their property if they can take ownership and the property owner does not get anything in writing. They assure the homeowner that they can help refinance and they may live in the property and purchase it back. Then the individuals have handed their title over and have nothing in writing and the opportunities and equity evaporate. There are provisions in the legislation that require notifications provided by the Attorney General's Office of adopt foreclosures and rescue scams and provide information and a contact phone number. These notifications would be included in the written contract of any foreclosure rescue process and also in the paperwork that would come to an individual when they are in foreclosure from the title company, bank or lawyer. Provides for a 5 day right of decision of that contract in the foreclosure process the individual can opt out of the

contract.

MOTION: **Senator Broadsword** moved to send RS17713 to print. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Alex LaBeau, President of IACI**, to the Committee to present RS17822.

RS17822

Relating to Labor

This legislation deals with discretionary agreements between employees and employers. Last year the Senate considered a concept and the legislation did not pass on the Senate floor. This new legislation clearly delineate the objective we are trying to achieve in this public policy process. A key employee or independent contractor may enter into a contract with their employer for a non-compete agreement. The agreement states that technologies, intellectual properties, business plans, business process and methods of operation, customers, customer lists and contacts. Essentially anything a business relies on to be successful. It includes contract definitions between employer and employees and establishes legislation that gives employees and employers an predictable playing field by establishing what rebuttal presumptions may be associated in a dispute. These are voluntary contracts entered into between employer and key employees.

Chairman Andreason said it is his understanding in reading the bill that this bill addresses only key employees who have access to very privileged information concerning the company. **Mr. LaBeau** answered yes as defined in the definitions they are talking about those key employees that have access to key information in the operation of the company.

MOTION: **Senator Cameron** moved to send RS17822 to print. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote** with **Senator Werk** requesting that he be recorded as voting nay.

RS17793

Relating to Insurance

Senator Cameron said RS17793 is a follow-up to S1105 that was passed unanimously last year out of this Committee on the Senate floor and also unanimously in the House. That bill was to raise the dependent age on health insurance products from 19 if they are not in school 23 and if they are in school to 21 if they are not in school and 25 if they are in school. We worked with Legislative Services and the Department of Insurance when we drafted the bill. Unfortunately what we didn't recognize was that there were certain segments of the code that were not addressed in the old definition of 1923. Although all of the other entities that are addressed in this bill were using 1923, there was not statutory law telling them that they had to do so. The only products were individual products and small group products that were statutorily told to use 1923 and now 21 and 25. After leaving the session it put some of the carriers in a predicament they did not know how to handle. This bill is to clean-up the mess. There are 5 sections that are affected: 1) General section that changes *Section 41-2210, Idaho Code*, which addresses all group plans. That would raise the dependant age on all

group plans in that section. Same language that applied to the small group would apply to the large group, 2) Hospital service corporations, 3) Preteral organizations, 4) Professional service corporations, 5) Self-funded plans and government plans. The benefit of passing this bill would reduce the amount of uninsured, based on the study done last summer that the largest segment of our uninsured public is the 18 to 28 year old age group who are basically healthy. By allowing them to stay on their parent's plan on the group plan it actuarially would improve their demographics thereby resulting in lower costs to the overall group.

MOTION: **Vice Chairman Coiner** moved to approve RS17793. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

RS17805 **Relating to Idaho Individual High Risk Reinsurance Pool**

Senator Cameron stated that in 2000 they developed the high risk pool which was designed to help all Idahoans to purchase coverage regardless of their health condition. An individual who currently had coverage could not purchase a high risk pool product. A product was developed to help individuals who are maxing out their lifetime maximum benefits. When individuals would max out their benefits they would have to wait until their coverage terminated before they could apply for the high risk coverage. The statutory change states: An individual who would otherwise qualify for the high risk pool and they have reason to believe that in the next 90 days they will max their benefits they can apply for high risk product, so when the old plan ends the high risk plan will be in place.

MOTION: **Senator Werk** moved to print RS17805. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

RS17407C1 **Relating to Building Codes**

Vice Chairman Coiner stated that in one of the rules of Building Safety an architect, David Rudeen, testified before the Committee. In his testimony he stated that there was a conflict between the rule and code and he did not know which code he was to build to. The Committee did find that there was a conflict.

Chairman Andreason welcomed **Steve Keys, Deputy Administrator, Division of Building Safety** to the Committee.

Mr. Keys stated that earlier in the rules review, Mr. Rudeen a local architect brought to their attention conflicts between the code and the rule. H137 adopted the 2006 version of International Energy Code as that bill was formulated it restated the effective dates for the 2003 Building Codes. As such the statute superceded the adoption by rule by the Building Codes Board of 2006 of the International Building Code, International Residential Code and the International Code for Existing Buildings. They had an RS17407 in process with the original intent to give the Building Code Board the authority to amend adopted codes. The change would also revise *Section 39-4109, Idaho Code*, and correct the references to the specific additions of the Building Codes it affects in the State of Idaho. Those codes as stated would reflect the

2006 version of those codes instead of 2003 versions.

MOTION:

Senator Stegner moved to print RS17407C1. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Senator Werk said he certainly will have questions about the ability of the Board to amend.

Chairman Andreason welcomed **Ken McClure, Givens Pursley**, to the Committee to present RS 17818.

RS 17818

Relating to Public Adjusting

Ken McClure stated this legislation deals with a practice in the insurance industry of public adjusting. Under the current law in Idaho there is no ability for someone to work as an adjuster for the insured only as an adjuster for insurer. In 42 other states legislation similar to this has been enacted allowing the practice of public adjusting. This statute is based upon a national association insurance Commissioners Model Act. **Mr. McClure** said he did not draft the legislation. He took the model act to the department and asked if this would work for them and they asked for a few changes. Some claims in particular are very complicated to get adjusted. The business interruption insurance if my store burns my loss is not only the loss of inventory and the cost of repairing the store but it is also the loss of my business profits during the period of time in which the store cannot operate. These are complicated claims and they are not well suited for anyone else in the private sector. Currently if you are a store owner and this happens to you, your choice is to go hire a lawyer and then the lawyer will go hire an expert which will be one of these public adjusters. It is not necessary to have a lawyer in the middle of this process. The insured would wish to go directly to the public adjuster and have the adjuster's services provided directly to the insured. Unfortunately, because of a Supreme Court case in 1994 that can't go on in Idaho unless a statute is passed. He was not aware of any opposition to this legislation.

Senator Broadsword asked if that court decision was 14 years ago, why are we seeing this now? **Mr. McClure** said it is a very niche market and there are work arounds under current law. You can go to a lawyer and have the lawyer represent the client and the adjuster work for the lawyer. It is a very cumbersome process. NAIC finally has model legislation and we need to see what we can do to get it enacted.

Senator Werk asked who are you representing in bringing this legislation to us today? **Mr. McClure** stated he represents a company called Adjusters International which provides public adjusting services in most of the other 42 states and would like to provide those services here in Idaho.

MOTION:

Senator Broadsword moved to print RS17818. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

S 1368

Relating to State Personnel System

Vice Chairman Coiner said they would hold this subject to the call of the chair.

Chairman Andreason welcomed **Vicki Tokita, Human Resource Program Manager, Division of Human Resources**, to the Committee to present S1252.

S 1252

Relating to State Employees

S1363 directed that employees designated as executives would not be eligible for comp time and provided guidance on how to eliminate comp time balances. We now have newly promoted executives but there is not guidance on what to do with their existing comp time. We propose that newly promoted executives have 12 months to use comp time balances from the date of their appointment. The remaining comp time would be forfeited. Another portion of this bill is to cap comp time earned. At present there is no limit on comp time and employees could use this leave to extend their retirement leave which would mean that the agencies would not be able to fill their vacancies. It also has current definitions in Idaho Code for administrative professional and computer workers that do not align with the Fair Labor Standards Act. To avoid this discrepancy we ask that the code referred to is FLSA. The references to earned administrative leave eliminated it. It is paid off when an employee separates just like vacation leave.

Senator Werk asked for clarification of the proposed legislation. Is the Division going to limit overtime, limit comp time and eliminate earned administrative leave? All he sees is if you are an employee you lose every way you turn within the context of this legislation. Is there anything good for employees in this legislation? **Ms. Tokita** explained this really is more of a management issue. There are employees that have many hours of comp time that have not been managed.

Senator Cameron stated that one of the issues that he has heard from agency managers is as they administer comp time because there is no threshold it puts them in an awkward position. They do not allow much comp time within agencies. By having a level of control they would be more readily able to manage the comp time.

Senator Stegner said when they passed S1363 they took away the benefit for them to accrue any comp time. They were under the presumption that these were senior management positions that were responsible for doing their job regardless of how many hours it took. The comp time these senior managers accumulated before they assumed their senior positions needs to be dealt with which was never contemplated in the original legislation. This is not a matter of trying to limit the benefits to particular employees, it is bringing the new managers up to the same standard as managers that are in place.

Senator Werk asked about the definitions of computer worker, what is the definition of part-time employee. I know your department has been looking at taking health benefits away from part-time workers and I want to make sure we are not dealing with that issue. **Ms. Judie Wright, Acting Administrator, Division of Human Resources**, said they have a real injustice with non-classified employees that are not contributing into PERSI and are not contributing into group insurance who are getting sick and vacation days. They have classified employees who are paying into PERSI and group insurance. In *Section 59-1603, Idaho Code*, is a section that states that non-classified employees should

conform to classified employees as much as possible and in this case they have it just the opposite so they are just trying to make it consistent. **Ms. Tokita** replied the current definitions in the Idaho Code are obsolete with the Fair Labor Standards that changed their definitions. Every time Federal legislation has changed, we can just refer to that code. On the part-time definition on page 5, *Section 59-1603, Idaho Code*, refers to the non-classified actually has a definition of part-time. We are proposing that we use the same language as *Section 59-1603, Idaho Code*, and align *Section 57-5302, Idaho Code*, with that definition.

Senator Broadsword asked when an employee leaves the employment of the state they lose any comp time they had no matter how many hours they had accumulated even though it was under the 240 hours? Is that correct? **Ms. Tokita** said if they are administrative or professional you could use this leave currently to extend your retirement leave. That poses hardship on the agencies because they cannot fill those positions. **Ms. Wright** clarified that another reason comp time will be capped is so there are not hours accumulated at one pay rate and then when the employee terminates the accumulated hours are paid at the employees hirer pay rate. Another 240 hour cap that they are looking at is for the administrative professional computer workers, because they have a few employees that have over 800 hours of comp time.

Senator Stegner pointed out to the Committee there are a lot of duplications in the code. Title 59 Public Officers in general and then it is repeated in Title 67 State Government and State Affairs. Additionally it is repeated under vacations and holidays and much of it is redundant but it is just the way the code works.

Senator Werk asked **Ms. Wright** to clarify that there are managers in the state system that are not able to control their workforce and so their workforce puts in many extra hours and they build up a lot of comp time. In statute you are asking the Committee to cap those comp time hours to 240. **Ms. Wright** explained that this is a management tool for employees to not have more than 240 hours of comp time on the books at any time. **Senator Werk** asked if we had a crunch with computer workers putting together the MMIS System and we had these working weekends to hit a deadline and they cannot accrue comp time above 240 hours, do they get overtime? **Ms. Wright** stated that in that type of situation they can always go to the Board of Examiners for that group of people and ask for their approval that this group could have more than the 240 hours.

Senator Stegner asked will this limit the ability of Division of Financial Management and Legislative Services to address the needs of the legislative session and restrict them a fair and equitable compensation of time or revenue to those employees? **Ms. Wright** answered that for the Division of Financial Management 240 cap will not affect projects.

MOTION:

Senator Stegner moved to approve S1252. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Senator Werk asked why are we defining computer workers in the middle of this legislation when without it it would apply to them anyway?

**GUBERNATORIAL
APPOINTMENTS:**

Ms. Tokita answered that currently that definition is not in Idaho Code.

Chairman Andreason introduced **M. Dean Buffington** who was appearing before the Committee for approval of his re-appointment to the Idaho Endowment Fund Investment Board for a term commencing April 12, 2007 and expiring April 11, 2011.

Mr. Buffington advised that he currently serves as Chairman of the Board of the Idaho Endowment Fund Investment Board. He was appointed to that Board in 2001, re-appointed in 2003, and stands before you today for another reappointment.

Mr. Buffington stated that his entire professional background of 38 years in Idaho has been in the business of managing other individuals money in fiduciary relationships. I spent 31 years with First Security Bank and spent 25 of those years managing the trust in private banking and investment department of the bank. In the last 10 years, I have been a partner in investment management company in Buffington, Mohr and McNeal. My other experience has included working for other civic organizations such as: St. Alphonsus Foundation, Pension Fund of the Christian Church, College of Idaho served as a trustee and Chairman of the Endowment Investment Committee, several Masonic Investment Committees and the Endowment Fund. I enjoy the work and it has been interesting times over the last few years. I joined the Endowment Fund Board right after the Board was authorized to invest in equity rather than be 100% in bonds, then the market goes crashing. I would be very pleased if I am confirmed to continue on.

Mr. Buffington pointed out an error on his resume that he had overlooked which states that he is still Chairman of the Foundation Board of St. Alphonsus Hospital and that position ended several years ago. I currently have no position at all with St. Alphonsus.

Senator Stegner thanked **Mr. Buffington** for his service. He brings just a wealth of financial background and you have donated many hours to the State of Idaho trying to secure our financial future. We want to express the people and the State of Idaho's gratitude for your long service.

Chairman Andreason thanked **Mr. Buffington** for his attendance.

Chairman Andreason introduced **Senator Brad Little** who was appearing before the Committee for approval of his re-appointment to the Idaho Endowment Fund Investment Board for a term commencing April 11, 2007 and expiring April 11, 2011.

Senator Little stated that the Committee is hearing from the Alpha and the Omega of the Endowment Fund Investment Board. It has been a real privilege for me to serve with Dean as **Senator Cameron** knows we have weathered some hard times and I also echo **Senator Stegner's** comments about Dean's leadership.

Senator Brad Little advised I am in the ranching business and I have served on the investment committees for the University of Idaho, Idaho

Community Foundation and it has been a real privilege to serve on the Idaho Endowment Fund Investment Board. For years we have competed aggressively with PERSI and last year we finally eclipsed the return of PERSI and we are very proud of that fact. After the constitutional endowment reform was passed, our market timing was not very good and we are still trying to catch up with that bench mark that we have established at that point in time. The Endowment Fund Board has an excellent staff and we have a very cautious Board. The Board members are very aware of their constitutional duty to protect that corpus that was given to us at statehood and to make sure that the beneficiaries of the State of Idaho are well served by those long term investments.

Senator Stegner asked **Senator Little** how are we doing this last month? Senator Little replied we are just a few points behind our bogey, we are down. For the year and the period-to-date we are still ahead of our benchmark.

Senator Werk stated that he would like to thank **Senator Little**. He realizes Senator Little is a busy man and his efforts on the Board is appreciated.

Chairman Andreason thanked **Senator Little** for his attendance.

Chairman Andreason adjourned the meeting at 2:59 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 12, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:33 p.m.

MOTION: **Senator Bilyeu** stated she had read the minutes from January 24, 2008 and found them all to be in order and would move the Committee accept them as presented. The motion was seconded by **Senator Broadsword**. The motion carried by **voice vote**.

MOTION: **Senator Broadsword** stated she had read the minutes from January 29, 2008 and January 31, 2008 and found them all to be in order and would move the Committee accept them as presented. The motion was seconded by **Senator Bilyeu**. The motion carried by **voice vote**

S1365 **Relating to Emergency Responder Death Benefits**
Senator Bastian stated that this bill deals with the Idaho Volunteer Fire and Emergency Services Association, their members and responders in service to the public. It is to provide a death benefit of \$100,000 to the Volunteer Emergency Responders funded through the premium tax. It has become more difficult to recruit volunteer firemen and volunteer emergency responders to serve. Firemen and other volunteers put themselves in danger and even death; seven volunteers over the last 20 years have died. He introduced those who would be presenting the bill today: **Kevin Courtney, Star Fire Chief, Greg Redden, Executive Director of the Idaho Volunteer Fire and Emergency Services Association** and the **State Fire Marshall Mike Larson**. He then yielded the floor to **Kevin Courtney, Star Fire Chief**.

Chairman Andreason welcomed **Kevin Courtney, Star Fire Chief, and President of the Idaho Volunteer Fire and Emergency Services Association**, to the Committee to present S1365.

Mr. Courtney introduced Rick Welch, Fire Chief of Gem County District

1, Steve Donahue, Deputy Chief of Star, Adam Ward, Volunteer Fireman with Star Fire Department, Chief Shannon Crase, City of Emmett, Chief Phil Gridley, Mt. Home Fire Department, and Chief Ron Anderson, Meridian Fire Department. Mr. Courtney said rural communities across the state need to provide various types of benefits to volunteer emergency responders as a recruitment and retention tool. Statistics have shown that volunteer ranks are down 10% over the last 20 years across the United States. The United States still relies heavily on the emergency responders now more than ever. Rural communities cannot afford to put full time firemen on the payroll so they rely on volunteers. These volunteer responders risk their lives every day and earned the right to receive fair benefits. Passage of this bill will address both these issues and enhance the ability to communities to recruit and retain volunteer emergency responders. Volunteer emergency responders include volunteer firefighters, volunteer reserve peace officers, volunteer EMS and EMT personnel throughout the State of Idaho. Workman's comp pays out a \$6,000 burial and we lose one volunteer emergency responder every three years. Emergency responder death benefit must be the result of bodily injury, extreme exercise or extreme activity experience in scope of official business. The line of duty death includes heart attacks while on duty or within 24 hours after participating in training exercises or responding to an emergency situation. After a death certificate, an autopsy and affidavit from the local chief are received by the State Fire Marshall Office, the benefit will be paid within 14 days. The volunteer emergency responder fund as **Senator Bastian** mentioned will be funded out of the premium tax. We have support for the legislation from the Idaho Volunteer Fire and Emergency Services Association, the Professional Firefighters of Idaho, the Idaho State Fire Commissioners Association, The Idaho State Fire Commissioners Association, Idaho Fire Chiefs Association, Idaho Peace Officers Association, and Idaho Fraternal Order of Police. **Senator Goedde** stated he looks back to when the Legislature extended a benefit to two deputy sheriffs that were killed serving a warrant. We did it after the fact and there was debate at that time that this was a slippery slope and that someone would be back for more and now you're here. Why should we extend this benefit to you and not extend it to school crossing guards and any other volunteers that may be out there working for public entities? **Mr. Courtney** answered we can't cover everyone in the State of Idaho over everything. I hope we can do the best we can to provide benefits to the volunteer firemen and the EMT. **Senator Goedde** asked where it separates volunteers from paid personnel in this bill? **Mr. Courtney** answered on line 21 in the bill it states, "however the death benefit provided for this act is not intended to be an addition to the public safety officers death benefit provided in *Section 59-1361a, Idaho Code*". **Senator Goedde** asked that if every three years you have a fatality yet your asking for a fund of \$1 million can you tell me if you are only going to pay out \$100,000 every three years why you need a \$1 million fund? **Mr. Courtney** answered we are asking for the fund to be \$1 million in the event that there is a catastrophic event and there are multiple lives lost. **Senator Goedde** asked can you tell me the difference between a public safety officer and an emergency responder?

Greg Redden, Executive Director of the Idaho Volunteer and Emergency Services Association, answered you asked about the current code for public safety officers it is on page 1, 59-1361a. In PERSI under this code, public safety officer death benefits currently are paid under PERSI. What we tried to do with the terminology of the volunteer emergency service provider was to take in everyone that was not already covered in the line of duty with a current death benefit for career firefighters and peace officers. **Senator Goedde** said he sees firefighters, paid firefighters and police officers here tell me where EMT's are covered under this bill. **Mr. Courtney** answered that full time EMT's are not covered. In the proposed legislation we tried to be inclusive to everyone who was not covered as emergency responders under 59-1361a. **Senator Cameron** said a few years ago legislation was brought forward to do a similar bill for career officers. We didn't care for it much because it took money out of the state coffers rather than using normal actuarial processes and running it through an insurance product. After a lot of work that is the reason the bill is in PERSI the way it is. **Senator Cameron** asked help me understand why that would not be a more appropriate approach then \$100,000 a year out of the premium tax fund? **Senator Cameron** said that he has family that are volunteer firefighters and he said they are to be commended and honored for what they do and I want to be able to help, but I am having difficulty with the language of the bill not the concept why we are not using a traditional death benefit. Some volunteer fire departments have actually purchased death benefit coverage for their volunteers. Why wouldn't you want to pursue this action rather than an automatic steam out of the premium tax? **Mr. Courtney** answered they have contacted PERSI to try to get volunteer firefighters to be members of PERSI and they were told that PERSI is just not set-up to handle their volunteers. When the premium tax was originally instituted was to enhance fire fighting in the beginning for the safety of the fire industry. They tried to find a fund that would tie into fire fighting. **Senator Cameron** said he was not suggesting that the volunteer firefighters tie into PERSI, but what would be wrong with them in their local fire fighting district having a death benefit rather than asking the state to put money in a special fund for them. On this bill we would be funding that death benefit with 100% taxpayer dollars. If you were to purchase a policy you would be spending pennies on the dollar for that same death benefit. **Mr. Courtney** responded that the majority of the volunteer fire fighting departments in the State of Idaho do not have the funds to purchase those policies. Our intent was a bill that covered everyone. **Senator Cameron** said small departments may not be able to do it on their own, why was an approach not taken to request assistance from the state on a statewide purchase of a plan? **Mr. Redden** answered we did shop to see what it would cost to buy one policy for every responder for the State of Idaho for \$100,000 death benefit and the price was in the \$360,000 to \$370,000 range. From a budget standpoint it made more sense to set the money aside each year instead of paying that insurance premium each year. **Senator Cameron** asked was that a group policy or an individual policy? **Mr. Redden** answered it was a group policy quoted by two different companies Provident Insurance and DFIS that specialize in insuring firefighters in different states.

Senator Cameron asked why use premium tax dollars and why subtract it from the premium tax stream where you indicate? He understands the way the bill is drafted they subtract from the premium tax stream ahead of what is going into the high risk pool and Access Card, they are in essence, unintentionally, harming programs that help the uninsured and children in order to provide a death benefit for your group.

Mr. Larson, Fire Marshall for the State of Idaho, answered that he had a distribution summary of the premium tax collections and distributions over the last 10 years that he handed out to the Senators. Our department fiscal officer explained that the volunteer firefighters would be another agency drawing from the designated portion of the premium tax. It does not detract from the funds that are already in the fund. What it does detract from is the total that goes to the general fund. **Senator Cameron** asked **Mr. Larson** if it was his understanding that the bill does not take out from the premium tax fund ahead of the Access Card and the CHIPS program as he understands that is not the case? **Mr. Larson** replied that the way it was explained to him the existing programs would remain in tact. This does not impact them. Once the statutory obligation has been made to fund those then the volunteer responders would become funded before the balance is transferred to the general fund. **Senator Cameron** asked **Mr. Courtney** how many volunteer firefighters and EMS responders would be covered under this legislation? **Mr. Courtney** answered that in the State of Idaho there are approximately 5,000 volunteer firefighters. **Senator Cameron** asked would this bill, if we had wild fires in Northern Idaho or some major issue, and other volunteers from other states came in to assist us, what would happen with this bill? **Mr. Courtney** answered that the intent is not to cover firefighters from other states only as long as you are a member of a bonafide fire department or EMS within the State of Idaho. **Senator Cameron** asked are there residency requirements, just membership? **Mr. Courtney** answered they did not designate any residency requirements. **Senator Cameron** said earlier in your presentation you said history has shown we have lost 20% of our emergency responders statistic and the statistic that they would lose one emergency responder every three years. **Mr. Courtney** answered the 10% statistic is in the last 20 years and is a membership statistic. It was supplied by the National Volunteer Fire Council. **Senator Goedde** asked **Mr. Larson** can you outline for the Committee what other benefits are available to firefighters such as federal benefits in addition to what the state provides now through worker's compensation. **Mr. Larson** answered to the best of his knowledge there is a federal program for a line of duty death benefit that covers both career and volunteer firefighters and law enforcement. **Senator Goedde** asked **Mr. Larson** if he knew how much that death benefit would be? **Mr. Larson** answered he thought it is \$250,000 for each person. **Senator Davis** said he is struggling with why the State of Idaho should be the entity that provides the death benefit? If there is an EMS full time employee that works for the City of Boise, why should the State of Idaho provide the death benefit and not the City of Boise? **Senator Davis** said that maybe he has misunderstood the definition of emergency responders.

Mr. Courtney answered if you work for the City of Boise you would be eligible for the death benefit through the City of Boise. This bill is intended to cover the individuals that are not covered on the current bill. **Senator Davis** asked who did you mean to suggest that this also picks up besides volunteer firefighters, define that for us? **Mr. Courtney** answered emergency responders that are defined as being a member of a bonafide police department or fire department or a licensed EMS agency in the State of Idaho. **Senator Davis** said he still did not understand. **Mr. Courtney** gave an example: We have several departments in the State of Idaho that have both EMS and firefighters. Some of these individuals only run EMS calls but they are a member of the fire department. When a fire department has an ambulance they provide EMS service and they also provide fire fighting service. Some departments are cross-trained to do both. **Senator Davis** said let us change the question from the City of Boise to the City of Parma. They are an employee of the City of Parma, shouldn't the City of Parma provide the death benefit not the State of Idaho? **Mr. Courtney** clarified as a member of the fire or EMS department? The intent of our bill is for example. Three firefighters from the Star Fire Department were fighting the fire up in Ketchum this summer, one full-time fire fighter and two volunteers fighting the fire. The federal agency decided to do a backfiring operation and our firefighters were standing there to protect a structure. The operation went bad and the federal individuals pulled out and our firefighters held their position. If our firefighters would have died, one of our firefighters would have gotten a death benefit and the other two volunteer firefighters would not have received a death benefit. We want to correct this iniquity through this bill. **Senator Davis** said he understood the target of the remedy. As I understand the bill it seems you are asking the wrong governmental agency. If a city chooses to have and use a volunteer fire department than that city should consider providing the death benefit. I do not think the state should indemnify the cities for the risks it chooses to take or oppose on its volunteer professionals. Firefighters, EMS, whatever, that is the problem I have with this bill. **Mr. Courtney** answered that most of these entities in the State of Idaho cannot afford to hire the full-time firefighters and EMS so they have to have the volunteers. **Senator Davis** said he found it difficult to embrace the notion of a \$300,000 premium to fund the insurance. If you would break this down on a community by community basis it might make the remedy affordable to some of these political subdivisions rather than asking the State of Idaho to put up \$1 million. **Senator Stegner** said the way the bill is drafted, you provide this benefit for those named professions and then if they qualify for *Section 53-1361, Idaho Code*, then they do not get the benefit and what everyone should know is that *Section 59-1361, Idaho Code*, is PERSI the Idaho Public Employee Retirement System. Within that system we have a number of benefits, retirement benefits, and other additional benefits and we have a death benefit for these particular professions within that system. Everyone is covered in the PERSI System and that benefit is paid by the municipality, not the State of Idaho and the covered employee. They both participate what is calculated to be the cost of that benefit. If Lewiston, Idaho has some of these officers they are paying the premium for this benefit. What **Senator Davis** and I are

asking why is the State of Idaho being asked to cover these municipal officers. They are not the State of Idaho officers, they are municipal officers and in some cases we have municipal governments that are not providing a benefit. If this Committee were to pass this, the second that we provide that benefit any other municipal government that is providing any benefit would immediately stop because the state is taking on that bill. Several of us are having a difficult time understanding why it is the state's responsibility for this benefit rather than the City of Lewiston, City of Kamiah, or any other municipal government that chooses not to provide a benefit under these cases. Secondly, if the state goes down that road, which we have over the last 10 years a number of times and we have had to unravel it because it does not make economic sense we are going to run into the same situation that **Senator Goedde** suggested. Once we say the State of Idaho is on the hook for a benefit like this for a class of employees that are not even employed by the State of Idaho we will have all sorts of other entities within the state suggest that maybe the State of Idaho would like to provide a benefit for them. I will use this example. The tragedy of a high school teacher shot by a student in the course of performing their teaching duties. I can't think of a more tragic incident to happen in this state than that situation. Idaho does not provide that death benefit to teachers under the same logic that you presented to this bill that the State of Idaho ought to consider that benefit. There would be no end where the state would be asked to write a death benefit. Would you care to respond to that analysis? **Mr. Courtney** asked don't these firefighters, EMS, and emergency responders work for the cities and the fire districts within the State of Idaho? They may not be direct employees of the State of Idaho but there are reasons why these different entities, cities, and districts are using these volunteers because they don't have the funds to hire full-time individuals.

Senator Broadsword said each of these small cities that have the volunteer fire departments pays their insurance and on each insurance they pay insurance premium tax. So they have actually paid into this fund with no anticipation of getting anything back out of it. Could we not make the case that they actually are the ones that help fund this premium tax. **Senator Cameron** said in most plans they would be contributing in paying a premium tax. The amount that they are paying in, if segregated, is minuscule compared to the overall amount of money being received for premium tax. Remember that it is not just the city that is paying, that in many cases the employees as well. So you have secretaries, transportation crews, public works, etc. contributing which probably leads to the argument as to where it stops. If everyone who contributed to premium tax said I want a \$100,000 death benefit, we would be broke. How do you encourage municipalities and other entities to do the right thing and provide an adequate death benefit toward their firefighters whether they are volunteer or otherwise. **Senator Broadsword** said each and every business in that community also contributes to the premium tax and each business is protected by that volunteer fire department. I know for my business I am thankful that there is a volunteer fire department that I can call. Many of my rural communities can't afford any more insurance and that is the only way

the districts have to do this is by paying insurance. As the good fire chief says you are looking at three times the amount per year just to buy insurance. **Senator Cameron** stated it is three times the amount only if you have a death every three years. General rule for term coverage you are looking at 18¢ on the \$1 that you would normally pay on group plans. **Senator Cameron** said he didn't disagree as they have volunteer firefighters in his district as well and family members. The dilemma is we want them there to protect us but it does mean that the state is the one that funds that or should it be the local units of government. Is it the local property tax dollars that should be paying to protect these individuals. You can set up a fund for \$1 million with 5,000 volunteers. I am not sure that actuarial pans out. \$1 million may not be enough money to cover the potential risk if the state decides to take this on. Under this bill the state would be playing insurance company. We are saying we have the taxpayers' dollars, we will be the insurance company and I am not sure that is our role. Perhaps our role is to encourage municipalities or even to provide some directive that the municipalities step forward and do the right thing.

Phil Gridley, Fire Chief, City of Mountain Home, asked to respond to just a couple of issues. I have been in the firefighting business for 31 years. About 80% of our district is state homelands. We fight a lot of fires on property that the taxpayers in that community are picking up the bill. We are looking for a little help from the state to help the rural districts, small communities such as the Grand Views and Brunos. They are doing bake sales, they are trying to do everything they can to raise money to support their volunteer fire district. They are begging for equipment. The Homeland Security through the Homeland Act where we get our fire equipment from it is the big departments that gets the equipment the small communities need. They don't have the number of people to respond and they need a lot of help. Go look at those communities and see how small they are. The nickel and dime equipment that they have as they put every penny that they have into equipment to try to keep their firefighters alive. **Senator Cameron** asked when you fight fires on state lands do you not get reimbursed from the state? **Mr. Gridley** responded that if it is within our fire district no. If we go out on mutual aid calls to help folks yes we get reimbursed. Our rural fire protection district is now fighting many fires on the interstate. We have had the Department of Transportation come and ask if we would start responding to fires outside the fire district. The state has no way to fight these fires. The semi-truck that burned out by Stage Stop a couple of years ago cost the State of Idaho a couple of hundred thousand dollars to fix the road. The taxpayers in our community do not want us to leave the fire district because they only have a limited amount of resources. **Senator Cameron** said he cannot vote on philosophy he has to vote based on what is inside this bill not what he would philosophically like to have happen. **Mr. Gridley** stated that he understood but again the homeowners inside that fire district are all paying into that premium insurance fund. **Mr. Courtney** asked to respond to a comment that **Senator Cameron** made concerning the state insuring this pool of volunteers. If you look at page 3, line 29 we actually put a limit death benefit table to the fund that would be limited to

the fund balance. Once the money goes into the emergency responder fund then that is the contribution so if you look at that in the event that their multiple qualifying claims against the fund that it paid the \$100,000 limit would exceed the fund balance. The State Fire Marshall shall divide the fund balance between the qualifying claims. If we did have a catastrophe and we lost 15 people in a fire the \$1 million would be divided up between the families. **Senator Cameron** said lets follow your logic here and help me understand. Lets say that we have this bill in place and we have the fund built up to \$1million and we have a situation like Ketchum and we lose 10 firefighters. The fund is now 0 then what happens a month later when one of your firefighters in Nampa goes out and gets killed fighting a blaze in town. Is his wife and family just as deserving of that same \$1million. **Mr. Courtney** stated you have to draw the line somewhere as far as the funding goes. **Senator Cameron** said that is why you use an insurance company for your coverage so you do not have to draw that line. So you don't have to say you get and you don't.

Senator Werk asked if the prohibition of providing the death benefit to people who are in the PERSI system under *Section 59-1361a, Idaho Code*, is it in an intent language of the bill? Then when we go to page 3, sub 5, there is something in the bill about that we won't pay a death benefit to a family of an emergency responder who is eligible for the death benefit provided in *Section 15-1361a, Idaho Code*. If we put something in intent language rather than in the structure of the bill is it operative? My impression was that intent language is something that can be ignored in the bill. **Senator Davis** responded legislative intent is actually codified, it certainly carries a lot more weight than this conversation in a set of minutes. **Senator Stegner** said while it is in the intent language and its interpretation is possibly subject to at least some confusion, the reference to page 3 clearly is the defining issue. It says the same thing. It limits the benefit to those not covered by *Section 59-1361a, Idaho Code*, which is a very specific PERSI funded death benefit for public safety officers. **Senator Werk** stated that as he read through the bill he keeps seeing emergency service provider and emergency responder interchangeably used although he sees a definition only for the emergency responder, do they have different connotations in law? **Mr. Courtney** asked could you tell me where the emergency service provider is in the bill? **Senator Werk** stated that it was on page 2, line 17 you refer to an emergency responder, then line 24 emergency service provider and the line 42 emergency responder, line 44 emergency service provider, page 3, line 1 emergency responder fund, line 5 emergency responder I am confused by the changing terminology in the bill. **Vice Chairman Coiner** stated I commend you for what you are trying to do here to get this benefit. I personally would have to agree that an insurance policy funded as opposed to a state funded benefit would be broader coverage for your personnel. Again, the state assuming responsibility for municipal employees bothers me. I think you have a good start on where you want to go. I think you can take a lot of this conversation today back and further your efforts.

MOTION:

Vice Chairman Coiner moved to hold S1365 in Committee. The

motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote** with **Senator Broadsword** requesting that she be recorded as voting nay.

Senator Goedde suggested one other opportunity you might look through is trying to expand the death benefit in the workers compensation system. When you are dealing with hundreds of thousands of workers the cost has to be a whole lot less for coverage. **Senator Cameron** stated he had one further point on page 4, lines 28 through 32 where the funds are taken out of the premium tax stream. You might notice in reading the other portions of that bill those dollars do come out ahead of the Access Card and the CHIPS Program. Unintentionally, if this bill were to pass as drafted it would cause harm to those two programs because it would siphon money ahead of those programs. Those programs are based on a percentage of the money at the \$45 million mark. **Senator Broadsword** stated her name is on the bill and she supports the concept. Though it is a good idea in concept it is not going to work the way the bill has been drawn up. I want to make sure the fire districts know that I will continue to work with them on this legislation and try to find a solution that is equitable.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason announced that the Committee was ready to take action on the reappointment of **Jody Olson** to the Public Employee Retirement System of Idaho Board. **Mr. Olson** had appeared at the February 7, 2008 Committee meeting and had been appointed to serve a term commencing July 1, 2007 and expiring July 2, 2012.

MOTION:

Senator Bilyeu moved to send the reappointment of **Jody Olson** to the Public Employee Retirement System of Idaho Board to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason announced that the Committee was ready to take action on the reappointment of **Dean Buffington** to the Idaho Endowment Fund Investment Board. **Mr. Buffington** had appeared at the February 7, 2008 Committee meeting and had been appointed to serve a term commencing April 12, 2007 and expiring April 11, 2011.

MOTION:

Senator Cameron moved to send the reappointment of **Dean Buffington** to the Senate floor with the recommendation that the reappointment be approved. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary [see Attachment 3].

**GUBERNATORIAL
APPOINTMENT:**

Chairman Andreason announced that the Committee was ready to take action on the appointment of **Senator Brad Little** to the Idaho Endowment Fund Investment Board. **Senator Little** had appeared at the February 7, 2008 Committee meeting and had been appointed to serve a term commencing April 11, 2007 and expiring April 11, 2011.

MOTION:

Senator Stegner moved to send the reappointment of **Senator Brad Little** to the Senate floor with the recommendation that the reappointment be approved. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

S1380

Relating to Protection of Credit Reports

Pat Collins, General Counsel, Idaho Bankers Association, stated the purpose of this bill is to allow consumers to “freeze” access to their credit reports, as a means to help prevent fraud and identity theft. A “freeze” means that anyone attempting to obtain a credit report on a consumer will be unable to get one, and will simply be told that the credit report is frozen. Because most creditors and merchants won’t extend significant credit without reviewing the consumer’s credit report first, it will be more difficult for fraudsters to obtain credit using someone else’s stolen identity. If, having frozen his credit report, the consumer himself needs to obtain credit, he can temporarily lift, or permanently remove, the freeze on his own account.

More than half of all states have passed similar legislation. Discussions on this issue began last year, as a result of the interest being expressed by some legislators and AARP.

What the bill does is several things. It specifies how a consumer places a “freeze” with a credit reporting agency. The way the consumer places a freeze is by making a request in writing to the credit reporting agency to freeze his credit report, along with proper identification and \$6 fee. The bill also specifies that the consumer reporting agency then must place the freeze upon the consumers credit report within three business days after receiving the request. They must send written confirmation to the consumer within five business days after placing the freeze along with a unique personal identification number or password so the consumer later can contact the credit reporting agency if it wants to temporarily lift or permanently remove the freeze in the future. The consumer reporting agency shall develop a contact method to received requests to lift or remove security freezes. By September 1, 2008 credit reporting agencies must develop a secure electronic means to received requests. **Mr. Collins** answered some questions that **Senator Werk** has asked since the print hearing. Why are we repealing sections 28-51-101 and 28-51-102. The first section of the bill provides that those

sections are repealed. What those sections now do is they provide for block of information from the credit report. A consumer can ask for a block of the release of information of a transaction or transactions that arose from identity theft. Current law doesn't allow you to freeze your credit report entirely, it only allows you to block portions of it that you claim or support by means of a police report were a result of identity theft. **Senator Stegner** asked how does this bill differ from some of the other bills in other states. **Mr. Collins** stated that as far as he could tell none of the bills in other states are identical but there are some common themes. It might be useful to at least point out some of the important parts of this bill compared with what have been done in other states. Most states allow any consumer to freeze their credit report but some only allow identity theft victims to do that freeze. This bill would allow anyone to freeze the report. If you are an identity theft victim you do not have to pay a fee to implement the freeze. In other states the range of fees that may be charged for a freeze range from \$0-20. Other states allow freezes to be requested by consumers by certified mail or regular mail. Our version allows the consumer to use regular mail. This bill allows three business days to place a freeze and five business days to send confirmation to the consumer of the freeze. Some states allow five days and ten days respectively. This bill requires credit reporting agencies to perform a temporary lift of a freeze within 15 minutes of receiving a request by secure electronic means. Most other states allow three days to allow the electronic request. **Senator Bilyeu** asked how does a security freeze protect the consumer? The stock brokerage firm that she uses just had their information compromised and what they instructed their clients to do is through a credit reporting agency that we look at our credit report every month to see if anybody is using our identity. How would a security freeze protect a consumer under these conditions? **Mr. Collins** answered **Senator Bilyeu** you could make a report to the police department and then take a copy of that police report and send it to the credit reporting agencies and say you would like a freeze placed on your credit report. If anyone would request a copy of your credit report to initiate a transaction they are blocked. **Senator Bilyeu** asked if she wanted to check on her credit report then would she have to pay \$6 every time she wanted to ask for it? **Mr. Collins** answered no you can get your own credit report without changing the freeze. **Senator Werk** wanted to thank **Mr. Collins** and thank the people that worked the entire summer trying to hammer out the agreements that resulted in this bill. It is a good job overall by the community coming together and creating the bill. **Senator Werk** wanted to make sure of cost clarification. You have said the cost for a freeze would be \$6 but he wanted everyone to understand that is for each credit agency. Consumers will be liable for \$6 x 3=\$18 because there are three credit reporting agencies. **Mr. Collins** replied that this is correct. It is \$6 per each credit reporting agency and there are three credit reporting agencies. **Senator Werk** asked isn't the lift of the freeze from your credit report also \$6. **Mr. Collins** answered that this is correct. It would be \$6 for a credit report freeze lift. **Senator Werk** asked for clarification on a scenario of being in a car dealership and he wanted to finance the car. The car dealership could pick and choose the agency that they ask to lift my credit for the temporary lift so that

would cost me \$6. **Mr. Collins** answered that is true. There is no requirement that a merchant or a bank get a credit report from all three agencies.

Chairman Andreason welcomed **Mike Brassey, Attorney, Idaho Financial Services Association**, to the Committee to speak to S1380. **Mr. Brassey** stated he was before the Committee today representing the Idaho Financial Services Association in support of this legislation. He would like to express the Associations support for the legislation and support for the group that worked over the summer to put this legislation together.

Vice Chairman Coiner asked where is the state limited in what the state can do in comparison to the federal trade that administers these people. **Mr. Collins** answered the Fair Credit Reporting Act covers some of this field, but not all of it. It only preempts those things that it specifically chooses to preempt. There is no counterpart to this bill before you in federal law. There is no preemption of these sorts of laws at the state level. I did check just today with the American Bankers Association General Counsels Office to see as to what was taking place at the federal level. They informed me that there have been some proposals made at the federal level but there is nothing that would indicate legislation would be enacted anytime soon. This is not preempted by the Fair Credit Reporting Act in my view and Congress has not chosen to act as yet.

MOTION:

Senator Werk moved to send S1380 to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

S1394

Relating to Insurance

Senator Cameron said last year we passed S1105 which was the dependent age from 19 if you were not in school to 23 if you were in school. We raised those ages to 21 and 25. Inadvertently we left off several entities that we thought we were effecting. In the code we had previously not defined for a large group or any of these other groups the 19 and 23 age limit. They were all just voluntarily doing so because that is what had been standard practice. This bill attempts to correct the loophole that was created in S1105 and addresses large groups, government entities, fraternal associations, public service corporations, and self-funded plans. As you know self-funded plans are not really regulated by the state but by federal law they are exempt from state regulations. That has not stopped the state in the past from addressing new births, dependent requirements, maternity requirements, and mammogram requirements to self-funded plans. They are on the books we have done so because we felt public policy all plans should have to comply, but legally if a self-funded plan chose not to comply they would not have to do so. The overall effects of this bill are threefold: 1) We know by the study that was done over the last year about the uninsured that the largest segment of our uninsured population is from the ages of 18 through to 28. 2) This bill helps to reduce that uninsured population. 3) We know that the bulk of the uninsured children are healthy children,

and we know that if we can get them on the individual and group plans of the parents that it will help hold the costs down. **Senator Davis** asked what is the difference in a mandate by year and mandate by specific coverage. In other words we seem to have an aversion to saying we cannot compel the insurance to cover an individual for diabetes but we don't have a problem to do it by year or age. **Senator Cameron** answered a mandates a mandate so from that premise a mandate is certainly there. The difference is if you are a mandate on some benefit actuarially the actuaries have to calculate what that benefit potentially would cost. They would probably do that by age as well as the difference is these generally are people that are healthy and so the effect to the plan would actually be a positive effect.

MOTION:

Senator Broadsword moved to send S1394 to the floor with a do pass. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

S1395

Relating to the Idaho Individual High Risk Reinsurance Pool

Senator Cameron stated that Representative Collins and he as members of the Idaho High Risk Pool Board, in 2000, created a high risk pool. The Board actually runs the pool as part of the creation they did not want to create a product by which people would drop their coverage or go to the pool and lose their existing coverage. The pool has a requirement that if you have existing coverage you could not apply for high risk pool coverage. This product is intended for those individuals who are maxing out their benefits through private coverage. When an individual maxes out their benefits they have no other alternative but the high risk pool. Based on the rules insurance agents could not accept application from those individuals based on the way the statute was drafted until an individuals coverage was terminated. This caused additional claims to the individual and more claims to the county potentially and to our property tax bills. S1395 is drafted to allow for an insured who has reason to believe that in the next 90 days they are going to max out their benefits to be able to apply to the high risk pool. They can have their existing plan be concurrent with the high risk pool plan. In 90% of the cases when individuals are close to maxing out their benefits they are at 100% coverage. From the moment that an individual maxes out their benefits, if they have applied ahead of time, when they max their benefits with xyz preferred products then the high risk will start picking up the claims from that point forward. This will help keep people off our indigent roles. **Senator Broadsword** asked on page 3, line 45, states federally eligible individuals is this targeting illegal aliens as non-eligible. **Senator Cameron** answered that is existing code and when we wanted the program to qualify for high risk pool grants we made some statute changes along the way. One of them was federally eligible individuals who were displaced as per NAFTA and some of those acts. There were some provisions by which they could automatically transfer to the high risk pool. The language is referring to, which is existing code language, is those individuals it is not addressing illegal aliens. **Senator Davis** asked why do we have to have the lifetime benefit maximum of at least \$500,000. **Senator Cameron** answered the concern was if we did this there would be a

natural push for insurance companies to lower their lifetime maximum and you could potentially have a situation where someone bought a policy with a \$100,000 lifetime maximum. We wanted to make sure that it was at least a plan that had reasonable lifetime maximum. **Senator Davis** asked if an individual has a lower lifetime maximum than 500,000 and they max those benefits out then what happens to those individuals? **Senator Cameron answered** they would not be eligible for the high risk pool until their plan had been terminated and they had applied. They would not be able to apply early because this bill does not allow them that early opportunity. What we hope is that it is also a deterrent against companies having that low of a lifetime maximum.

MOTION:

Senator Davis moved to send S1395 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Chairman Andreason adjourned the meeting at 3

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 14, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Werk, Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Broadsword

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign in sheet.

CONVENED: **Chairman Andreason** called the meeting to order and welcomed Stephen Keys to the meeting.

BILLS

S 1396 Relating to the Idaho Building Code Board.

Stephen Keys, Deputy Administrator, Idaho Building Code Board, asked the Committee to hold this bill for one week to give them time to address concerns that have been brought forward.

Senator Stegner said he is supportive of that effort. He asked if this delay would also allow them to talk to some people who have concerns and possibly the consideration of negotiations for possible modifications? **Mr. Keys** answered that it is exactly what he has planned.

MOTION **Senator Stegner** moved to hold S 1396 to a future date of one week. The motion was seconded by **Senator Bilyeu**.

Senator Werk said he is glad that Mr. Keys is holding this to address concerns because he was not ready to support this bill.

Chairman Andreason called for a vote on the motion to hold S 1396. The motion carried by **voice vote**.

S 1397 Relating to Public Adjusting.

Ken McClure, representing Public Adjusters International, explained that a public adjuster is an insurance adjuster who works for an insured (rather than an insurance company) to help evaluate and document losses to support an insurance claim.

This legislation is taken from the National Association of Insurance Commissioner's (NAIC) model act with minor modifications to accommodate Idaho insurance laws. Forty-two states currently license or regulate public adjusters. Idaho is one of only eight states without a licensing mechanism.

Unfortunately, because of ambiguity created by an Idaho Supreme Court decision in 1994, without passage of legislation like this, it is unclear whether public adjusters may lawfully conduct business in Idaho. This legislation would permit public adjusters to help insureds document losses under their own policies while providing regulatory oversight by the Department of Insurance.

There will be modest increased costs to the Department of Insurance that will be partially offset by licensing fees.

Senator Goedde said there are some significant instances where use of a public adjuster would be good. He referred to loss of income coverage in businesses, where it gets very technical so that a business owner doesn't know how to figure it. If he deals with a company insurance adjuster, the adjuster will try to make calculations so his company won't have to pay any more than it has to.

MOTION

Senator Goedde moved to send S 1397 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

Senator Stegner said that legislators have learned by experience to be wary of licensure rules. They can be the most controversial thing they do. The primary reason for controversy is the exclusion of individuals from participating in one field or another. There are very good reasons for having licensure bills. One of their primary purposes is for industries to limit access to that profession due to the lack of educational or professional standards. Senator Stegner said he has no problem with licensing this profession in the State and has no reason to think this isn't an adequate licensure bill, but it is being brought by one particular company seeking licensure in this State. If the Committee passes this bill and if they come to this State, they will be, he assumes, the only one licensed for at least a period of time. Senator Stegner asked whether there is anything in this bill that will give them a particular advantage over other qualified people who might want to join the profession? If Mr. McClure isn't aware of any particular limitation in this bill that would exclude easy access of other individuals, can he give assurance that this is not an attempt by Mr. McClure's client to close any competition and monopolize this profession in the State? **Mr. McClure** said he can give assurance of this and also that his client won't be the only one who seeks licensure in Idaho. He believes there will be a handful of companies who seek licensure here relatively soon after this is enacted. Like everything else, there is a National Association of Public Adjusters comprised of many companies. The company that hired him is based in Seattle, and they provide regional services throughout the Northwest. They are the logical one to care most about the opportunity to provide their services in Idaho. When other companies see that this is done, because it will be on

the wire of the National Association, he fully expects them to come forward and seek licensure as well. There is nothing in this bill that gives any applicant for licensure any advantage at all. That was vetted thoroughly at the NAIC, and anyone who can pass the exam, demonstrate good moral character, and provide a surety bond can obtain licensure.

Senator Stegner said it was pointed out in the print hearing that this is based on a model act of the National Association. **Mr. McClure** said this is based on a model act of the National Association of Insurance Commissioners. He cannot recall making any changes to that model act other than those that were requested by Idaho's Department of Insurance.

Senator Bilyeu asked Mr. McClure to elaborate on his mention of a 1994 Supreme Court decision. **Mr. McClure** replied it was the Idaho State Bar versus Viegas was a decision issued August 23, 1994, in which a public adjuster who was practicing in the State of Idaho was found by virtue of the scope of work he was doing to be engaging in an unauthorized practice of law. Because an unauthorized practice of law is a crime, not addressable by a civil defense, that put a significant chilling effect on what people might or might not do in Idaho. That public adjuster was adjusting third party claims. In a typical auto accident, somebody runs a red light and hits another car. That public adjuster was representing the person hit in adjusting a claim with the other driver's insurance company. The court found that to be the unauthorized practice of the law. But the court used some relatively more broad language and said public adjusting is the unauthorized practice of law. **Mr. McClure** said he doesn't think first party claims are unauthorized practice of law because that would raise the question of how an insurance company can employ adjusters to practice the trade for them, but an individual insured could not. So this bill says the public adjusters may engage in claims for first parties only. They may not practice law unless they're licensed to practice law, but they can document claims and calculate the extent of damages. If an insured thinks their insurance company isn't paying them enough money, their only choice currently is to hire a lawyer. The lawyer will then hire an expert to help document. This bill simply allows the insured the option of hiring the public adjuster.

Vice Chairman Coiner asked about the examination. The bill says they have to pass a written examination, conducted under rules prescribed by the Department. It appears that all the responsibility comes back to the Department. How does the Department get paid for their work to establish all of these things for this industry? **Mr. McClure** said there are obviously license fees, exam fees, etc., but he doesn't know for sure that these fees will cover all these costs. When he talked to the Department about this they said it wasn't that big a deal. There are exams already in existence that they can go out and get. They don't have to re-create the wheel. There are regulatory processes already in place in other states that they can pick up and bring in. There will be paper to generate, but the volume of the time will not be great. **Vice Chairman Coiner** asked are there any fees for the licensure in this bill? **Mr. McClure** said the fees will be established by the Department. **Vice Chairman Coiner** said so this bill lays everything back on the Department - the rule promulgation, the fees to be charged - are all in their purview? **Mr. McClure** said that is correct.

Senator Werk said he wants to be sure about allowing promulgating rules for fees. On the last page of the bill, Section 41-5820, is the language is broad enough to allow for fees? There have been times when they have been approached about someone promulgating rules for fees and they've found that they didn't have the authority unless the Legislature gave them the authority. It doesn't mention fees in this legislation. He wants to make sure that this isn't passing something onto the Department and not authorizing them to provide for fees. **Mr. McClure** said the word fees exists in a couple of places - page 4, line 16 authorizes the Board to do an exam fee; page 5 line 39 talks about renewal fees; page 5 line 29 talks about an annual license fee. **Senator Werk** asked about page 8, Section 41-5814. He asked Mr. McClure to explain the purpose of this section of the bill. **Mr. McClure** said this is a conflict of interest. Just like a lawsuit, you can't buy an interest in the proceeds of the lawsuit. This is a similar notion, that you cannot accept a fee by paying a commission to get a fee. This is just a different way of preventing unauthorized practice of public adjusting. Number two says you can't accept a fee if you aren't licensed, and number three says you may offer employment to other people, for example, an investigator. You can pay a fee unless it violates the unfair claim settlement practices act. **Senator Werk** said on page 8, Section 41-5815, sub (2), says "The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim." Then there is something later on that says you can't pay the claim directly to the adjuster. He said he is looking at it from a consumer protection standpoint to make sure there isn't a situation where the dominant amount of the claim gets paid to the adjuster and doesn't make its way back to the claimant. Do we need to have limits on the amount of what they can be named as a co-payee? **Mr. McClure** said naming as a co-payee is what occurs now when you hire a lawyer, and the lawyer settles the claim and the check is made in the client and the lawyers names. There isn't a limitation on the amount of fee that can be charged, nor is there a limitation on the amount of a lawyers fee that can be charged, or other professionals fees - the market is deemed to take care of that.

Senator Bilyeu asked if this is primarily for claims that are larger than a home? A homeowner wouldn't seek a public adjuster, is that correct? **Mr. McClure** answered that isn't the market place these people operate in. He said he can't say it wouldn't happen in an unusual instance. You don't typically need to hire someone to help you document a dispute with your own insurer unless there is a significant disagreement between you and your insurer about what the value of your claim is. This comes in with the more complicated claims. **Senator Bilyeu** said she is thinking in terms of a very complex case, which she assumes would be going to court. She doesn't see where public adjusters would fit in. The attorney would say they need expert testimony here, but where does the public adjuster enter into that? It seems like it is another layer of expense for the person who has the claim. **Mr. McClure** said it might be, or you may be able, with the help of a public adjuster, to avoid the lawsuit, so it might be a cost saving effort. It may be they will sit down and come to a number that is agreeable to everyone so that a lawsuit wouldn't be involved. If there is a lawsuit involved, the work that the public adjuster has done already will need to be done for the lawsuit anyway. The first thing a lawyer will do is hire

someone like this as an expert witness. There won't be very many cases which will add cost, mostly you'll have a cost occur earlier in the dispute resolution as opposed to later in the dispute resolution.

Senator Werk said in reading the bill he saw a definition for catastrophic disaster. He hasn't found another mention of catastrophic disaster in the bill. Is there another mention, or a reason it is in there? **Mr. McClure** said the reason it is there is that it was in the NAIC model bill. He said he thinks it is referred to another place in the bill but couldn't find it standing here. **Senator Werk** said he did a search on the computer and couldn't find another reference to it. His concern is that if in other parts of the statute it is defined differently, and this piece of statute doesn't seem to have catastrophic disaster in it, this is confusing in the Code.

Senator Davis said on page 1 line 26 Section 41-5802. Definitions says "as used in this chapter" so it is limited to that. But this is a good question as to whether it is used elsewhere. If you use catastrophic disaster within the definition you would think it would be found in some other place. He would like Mr. McClure to get an answer for the Committee before they debate it on the floor. **Mr. McClure** said he certainly didn't delete a section that makes this applicable only to catastrophic disasters, but he will look into this and, if it isn't used elsewhere, it would be appropriate to eliminate it. **Senator Davis** said if they look at the model act, is the term catastrophic disaster specifically referenced outside of the definition section? **Mr. McClure** said he will find the answer.

Senator Werk said he assumes if they find this term is not needed they might just send this to the amending order, amend it out and go from there.

Chairman Andreason called for a vote on the motion on § 1397. The motion carried by **voice vote**.

Chairman Andreason commended Page Tyler Barton and presented him with letters of recommendation and a gift of thanks. Tyler said this has been a great experience and thanked the Committee.

ADJOURNMENT **Chairman Andreason** adjourned the meeting.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 19, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:33 p.m.

Chairman Andreason stated that **Representative Russ Matthews** has a bill on third reading in the House so he has requested that his bill be heard first so he can go back to the House. At this time he will call on **Representative Russ Matthews** to present H429.

H429 **Relating to Motorist Insurance**

Representative Matthews stated that the purpose of this bill is to make automobile insurance more transparent in allowing the insured person a better value and clarity in choice of automobile liability coverage. Specifically H429 accomplishes this by amending *Section 41-2502, Idaho Code*, and *Section 41-2503, Idaho Code*, by defining under insured motorists coverage. Furthermore, it also requires that under insured motorists coverage be offered along with uninsured motorist coverage. Uninsured motorist insurance coverage is when the third party injures you in a motor vehicle accident and the third party has no insurance. Uninsured motorist coverage gives one coverage when the other party who was at fault in the accident has no liability coverage. Under insured motorist is when the third party has insufficient coverage to pay for the damage that this party causes to your vehicle. This legislation will go a long way to curtail potential instances when automobile policy holders that have had uninsured motorist coverage erroneously assume that both uninsured and under insured coverages are included in their policy. It also allows a named insured to reject in writing or electronically under insured motorist coverage. Finally, this proposal will require that the insurance carrier provide to the named insured a summary statement approved by the Director of Idaho Department of Insurance explaining uninsured and under insured coverages and different forms of under

insured motorist coverages offered by insurers in Idaho. In the 2007 session the House passed an uninsured and under insured automobile insurance disclosures only bill H255. There was a competing bill S1125 relating to the same subject which passed both the Senate and the House. The Governor vetoed the bill on the grounds that it restricted consumer choice and mandated carriers to offer excess coverage for the under insured. As a result the mandate correcting this coverage would have driven up the cost of insurance for all consumers without giving consumers a choice between the types of under insured motorist coverage. H429 preserves consumer choice and will give more transparency to automobile liability insurance and will insure that the consumers right to reject or opt out of these coverages are available if they choose to do so.

Senator Werk said he thinks it is a state requirement for all motorists to carry insurance on their vehicle, is that correct? **Representative Matthews** answered yes that is correct. **Senator Werk** asked of this bill would allow consumers to make more of an informed choice on the insurance coverages that they are being offered. **Representative Matthews** clarified that what this bill does do is give clarity and choice on the liability coverage. It gives the insured the choice to choose between minimum limits or you can choose higher limits. This bill requires that the coverages are offered to the consumer. **Senator Werk** said he wanted the consumer to make an educated choice and it seems the issues associated with this bill are a bit complex because of the supplanting of your coverage by someone else's coverage. **Representative Matthews** said it allows the customer to choose what kind of coverages he requires, it does not take away limits from another persons policy. This bill, if it is passed into law, would have mandated limits for under insured and uninsured limits and the consumer can reject these limits. The Director of the Department of Insurance will have paperwork that the insurance companies provide so the consumer can make the educated choice on what limits of coverage they require. **Senator Broadsword** asked didn't this bill pass out of the Committee last year. **Representative Matthews** said you are mostly right. Last year in the House there was H255 which passed the House unanimously and was for disclosures only and not for under insured coverages. S1125 passed both the House and Senate but the Governor vetoed the bill. H429 takes the best of both bills and the concerns of the Governor were addressed in this legislation. **Senator Davis** said on subsection 3, bottom of page 1, language has to be approved by the Director of the Department of Insurance. He assumes that the way it is written different insurance companies could have a different explanation as long as the explanation is approved by the Director of the Department of Insurance. If your answer to this question is yes, than tell me what the relevance of the word standard is on line 1. If the answer is no, that it is something that the Director is going to write, then why not have it subject to administrative rules review? **Representative Matthews** stated that it was his understanding that the Director of the Department of Insurance would set in place the requirements and that they would be uniform and many insurance carriers have negotiated to come to this language. It is my belief that the word language would be uniform and if there were further clarifications that

needed to be made it could be brought about by rule making.

Chairman Andreason welcomed Steve Tobiason for further testimony on H429.

Steve Tobiason said he was representing PTI which is Property Casualty Insurers Association of America, State Farm Insurance and Farm Bureau all support H429 and they encourage this Committee to send it out to the Senate Floor with a do pass. This bill modifies two approaches of last year 1) a notice approach and 2) mandated coverage and specific type of offer coverage. It mandates every company in this state offer under insured coverage. When you look at motor vehicle coverage and what is mandated to be offered, it is basically bodily injury 25/50, property damage 15/30 and there are optional coverages. Uninsured, under insured, medical are optional. What this bill addresses is under insured and uninsured essentially the same, the consumer makes the choice. The reason for the informational statement that has to be provided at point of sale or renewal, that is approved by the Director of Insurance is to make sure that under insured coverage would be explained correctly to the consumer. There are two basic types of under insured offer of coverage by different companies in the state. One type is different in limits and the other type is called excess. The difference in limits if someone hits you and they have \$50,000 and you buy \$100,000 of under insured you are covered up to \$100,000. If you buy excess coverage they will take the \$100,000 and put it on top of the \$50,000 so you are covered up to \$150,000.

Senator Davis asked **Mr. Tobiason** to address the question he asked earlier. **Mr. Tobiason** answered in my discussions with the Director this is the explanation he gave me when he looked at that language. The Director will prepare an appropriate informational statement with input from the insurance carriers and trial lawyers and then he will make a final decision on what would be an appropriate statement form. This would be put out by administrative bulletin instead of actually adopting a rule.

Senator Davis said assume we have an insurance company that does not give the information on the coverage options so the consumer can make an informed choice on the insurance coverages what is the remedy for the insured for not having been Mirandized? **Mr. Tobiason** replied the basic remedy under the insurance code for the insured is that they come under potential sanction by the Department of Insurance. Their contract would not be in compliance with the provisions of the insurance code and if they are not they have to bring them into compliance or they face sanctions by the Department. The sanctions could be administrative fines or something more severe. In terms of the insured if there is not a rejection there has to be an opt out by the insured of the coverage electronically or written or they would have that coverage adopted by the company. The company is going to have to document that they have that rejection. **Senator Davis** said he is looking at subsection 2 and absent a rejection there is going to automatically assume a presumption of uninsured or under insured coverage and if so what is the amount going to be? **Mr. Tobiason** answered it is his understanding that it would be the same amount that they purchased for bodily injury coverage. So if they bought \$50,000 or \$100,000 that is the additional coverage they will have

of under insured. **Senator Davis** said if those are the assumptions why not just put it in the bill? **Mr. Tobiason** answered in working with the Director on the bill, he indicated that he felt satisfied with the language in terms of working with the statutes and what has to be implemented. **Senator Bilyeu** asked for clarification on what happens if you already have an existing auto policy when it comes up for renewal, will you be given notification of this under insured paperwork? **Mr. Tobiason** answered at your first renewal after January 1, 2009 you would also get the notification.

MOTION:

Senator Goedde moved to send H429 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Senator Davis said there are some holes in H429. First he would prefer quote "standard statement" which he still does not know what a "standard statement" means be subject to administrative rules review. Second, the question of what is the remedy is the big unanswered question in this bill and he does not know what it is but since we don't know what the remedy is, why put people in the courtroom to try to figure out what the remedy would be? For example, if I had an individual that did not get notice and they buy normal coverage of \$500,000/ \$1 million the insurance company may be better off taking a Department of Insurance sanction over having the liability issue. We are going to deny coverage and have the department tell us we goofed and pay a \$50,000 fine to the department. I think the bill should be written in a fashion that we plainly understand what the remedy would be. If there is a presumption that there is coverage absent rejection or that the remedy falls under the rule of the Consumer Protection Act, the soul remedy available to the insured is 0. We are providing no coverage absent a form of rejection and formal notice but at least the Department of Insurance can fine them. I honestly don't know what the remedy is and if I don't know the insured won't know and how is the Senate floor supposed to know. My suggestion is that we define that remedy and let the sponsors pick it. **Senator Goedde** said currently we have the same situation with uninsured motorists and he is sure the department and the court system have gone through every gyration in claims involving someone claiming they were not provided the opportunity to reject. He would think we have that behind us and all that is needed is a little research to determine what that process has been for uninsured motorists and it would apply the same way to under insured. **Senator Davis** said that **Senator Goedde** has a deeper understanding in this area than he does. Would he know what happens with uninsured coverage when there is an absence of a rejection? **Senator Goedde** said he thinks if you called across the street the remedy would be readily available. **Senator Davis** said we have all these bright people in the room and maybe they can answer my question and alleviate my anxiety. If he is down to whether it is an administrative rule or not he can choke it down. **Alan Dingle, State Farm Insurance**, said he has never approached this issue in the law in my 47 years of practicing law. If the agent forgets to inform his insurance customer and the acceptance doesn't get signed and if the insured gets in an accident they get the UIM

at the single limits as 25/50, 50/100 or 130. The same limits that you have on your liability insurance. **Senator Davis** said with **Mr. Tobiason's, Mr. Dingle and Senator Goedde** assurances and as long as we plainly reflect that this is our understanding of the remedy that is available to them in our minutes then he can feel peaceful absence some bad judicial decisions to the contrary. **Senator Goedde** said he has had instances in his office when a rejection form has not gotten to the carrier with the application and that policy is issued with the uninsured motorists included, until they receive the completed rejection form they will not remove it.

**DOCKET NO.
07-0301-0701**

Vice Chairman Coiner stated that the Committee has dealt with this temporary rule. It was passed out of Committee and it is mute because it was a temporary rule. The first set of minutes where the Committee motioned to put the rule on hold will be corrected.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

RS 17941

Stating Findings of the Legislature & Rejecting Certain Rule of the Real Estate Commission

RS 17942

Stating Findings of the Legislature 7 Rejecting Certain Rules of the Division of Building Safety

Senator Davis said he assume that both of these are just reject rules that they have previously spoken to before and since they are not a privileged committee they need to have a motion to refer it on to a privileged committee.

MOTION:

Senator Davis moved to recommend to a privileged committee RS 17941 and RS 17942 for print. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

S 1431

Relating to Foreclosures

Senator Werk stated that the Committee has before them a sheet of information that gives them background on foreclosure filings, increase in foreclosure filings, rescue service issues that have come up in the Attorney General's Office and the Department of Finance, some legislative actions that have occurred in other states and statistics on sub-prime loans effecting the Hispanic population. Also he has included in the hand-outs a sheet of defaults in Ada County by month. The purpose of the legislation before you is to educate the public concerning foreclosure rescue scams and about the foreclosure process in general. One of the notifications we are requiring be implemented would be to make the public aware that they need to act quickly when they enter the foreclosure process. Foreclosure is a very stressful process and most individuals tend to not make the most ideal decisions under these conditions. This makes these individuals a prime target for scammers to be able to coerce them out of their homes. The legislative intent process: 1) Requires that all contracts associated with the transfer of real residential property subject to foreclosure be in writing. We do not want to have the situations that we have had where scam artists come to the property owner and tell them they can save you from foreclosure if you just sign over your deed

to me and I will take care of the problem. We want to make sure those contracts are in writing. 2) Requires inclusion of a standard notification about foreclosure rescue scams in any contract associated with real residential property subject to foreclosure. In the statute we have a standard notification even detailing the font, color of the piece of paper that would go into the contract to make sure it was conspicuous and that there would be control over what that notification should contain. 3) Provides for a five day right of rescission for any contract entered into during the foreclosure process with a prohibition on transfer of funds or property interest during the five day period. Two issues that deal with these five days. 1) We want consumers that are under very stressful situations that may feel pressured to have a right of rescission. During the five days we hold the property transfer and the funds in abeyance. 2) It requires inclusion of a standard notification about foreclosure rescue scams that is written out in the legislation. In the paperwork it informs the individual that they have to act quickly that their options become limited the further into the foreclosure process they proceed. If a contract was negotiated and written in Spanish the individual can request from the Attorney General's Office a copy of that notification in Spanish. 4) Exempts currently regulated institutions from the contract provision. 5) Requires inclusion of a standard notification about foreclosure rescue scams in foreclosure documents provided to property owners of real residential property subject to foreclosure. 6) Allows for a Spanish language notification to be provided upon request by the Idaho Attorney General's Office—this is supported by an Attorney General opinion dated October 4, 2007 that indicates that this notification is permitted under 73-121 (4) (b).

What the legislation does not do: 1) Does not regulate or restrict real estate business practices. 2) Does not add requirements associated with contracts for regulated entities (including the added five day right of rescission). It is very difficult to draw a clean line between what is a legitimate business practice and what is not. We are trying to provide information to consumers and help the consumers make better choices during the foreclosure period. We do not place additional requirements associated with currently regulated industry. If you are Wells Fargo Bank we know that you are going to be conducting your business practices ethically and in writing and the Truth in Lending Act applies. For a legitimate lending institution this bill will not be touching their business practices. The notification provisions in the foreclosure package will still apply. The Idaho Banker's Association and Idaho Credit Union League have been very involved in helping us with this legislation. The Idaho Financial Services Association has helped with the amendments. The Land Title Association, Attorney General's Office and the Department of Finance were in the review process of this legislation. This legislation we believe is a much tighter piece of legislation that should serve our citizens well and cut down on the amount of individuals that are being victimized in these foreclosure scams.

Chairman Andreason said everyone agrees that this bill would help a great deal to solve the problem?

Senator Werk replied we are not trying to regulate practices because it is

very difficult not to shut off legitimate practices. There are legitimate foreclosure rescue operations in the marketplace and they do good things. They help individuals to stay in their homes and help them get back on their feet and we do not want to get in the way of that business. This bill provides notification, provides for contracts to be in writing and exempts out currently regulated entities. This is a very mild first step and does not regulate current practices. **Senator Davis** said it is his understanding that you want this bill to go through an amending order. **Senator Werk** said that is correct. **Senator Davis** said looking at the draft you want to strike everything from line 1 to the end and insert this in its place, is that correct? **Senator Werk** said that is not correct. It is easier to look at the bill in draft form. There are operative elements of the legislation that stay in place, but the legislation as it would be engrossed with amendments is what you see in the draft.

Senator Davis said my understanding of the law in this area is that you can have a mortgage foreclosure and you can have a trustee foreclosure. You can foreclose a deed of trust as a mortgage. A deed of trust is a non-judicial foreclosure where the three parties to the transaction create a trust. The grantor of the trust transfer the property to a trustee who holds it in trust for the lender and as long as the payments are made the indebtedness is satisfied. Ultimately the property will be released by a deed of reconveyance and the owner of the property continues to own it. If there is a default the beneficiary of the trust deed, the lender, notifies the trustee and the trustee may begin a foreclosure. They do not have to file a law suit. They hire title companies or lawyers and begin the foreclosure and they start the clock ticking by sending out a notice of default and trustee sale. The beneficiary of the deed of trust has a limited period of time in which to cure the residential property. If they fail to cure within that first 115 days then it can go to sale, but they do not ever have to file a law suit. It is also his understanding that a lender can choose instead to decide to foreclose this deed of trust not as a deed of trust but as a mortgage. They hire a lawyer and file a summons and complaint and they foreclose it as a mortgage. This is a judicial proceeding and if it is foreclosed in that fashion then there are rights of redemption that are available to the land owner. If you foreclose as a deed of trust, there are no redemption rights once the trustee deed is recorded, the grantor interest in the deed of trust is gone. He has a mortgage and that is usually foreclosed judicially. He notices that the language in the legislation is interchangeable. For instance on the draft page 2 on the notice required by law it says mortgage foreclosure is a legal proceeding. Does it mean a trustee foreclosure or a mortgage foreclosure? Above in *Section 45-1602, Idaho Code*, refers to *Title 45, Chapter 15* which is the trustee statutes. **Senator Davis** suggests that there is not consistency throughout this document. His understanding is that this is only intended to apply to trustee foreclosures and not to mortgage foreclosures, is that correct? **Senator Werk** stated that he is not an expert in this area at all, in fact Representative Killen, who is the co-sponsor, has dealt much more with this in his legal practice. **Senator Werk** said he can certainly remember having conversations associated with trust deeds versus mortgages.

Representative Killen pointed out in our collaboration that there are hardly any individuals out there that have mortgages because it is a judicial process and foreclosure is much more difficult. When individuals buy a home these days they are through trust deeds. **Senator Werk** said legally where this goes is that we are pointing out a specific statute that has to do with trust deed foreclosure. When it comes down to the notice required by Idaho law the Attorney Generals Office provided this specific language. **Senator Werk's** impression concerning the language is most property owners will tell you they have a mortgage on their property. This is common vernacular that individuals say they have a mortgage on their house or they are paying off the mortgage. In a notice that will be presented to a consumer that thinks mortgage, the Attorney Generals Office wanted to use the common vernacular we refer to *Title 45, Chapter 15* which is a trustee deed section but in the notice we mention mortgages. Remember the notice goes to the consumer so the consumer can understand the process. It provides a much more understandable notice to the consumer to say mortgage because 99.9% of us have a trust deed but we think we have a mortgage.

Senator Davis stated there is a third mechanism. If he wants to sell his home and he wants to sell it to you and you are struggling to get your financing in place he could sell you his property with what is called a land sale contract. He could sell it to you and you could sign a promissory note or a mortgage. A promissory note and a deed of trust or wrap my ownership interest up in a land sale contract and sell it to you and he creates an escrow through a title company and you make your payments to the title company they hold the deed at the beginning of the transaction. Should you complete the term regardless of where he is, the title company, can after the terms of the contract are satisfied, release the deed for recording. Should there be a default on your part and he goes to foreclose against you, certainly he could foreclose as a mortgage most often the remedy built in the land sale contract is self-executing. It is not a deed of trust foreclosure, it doesn't apply to *Title 45, Chapter 15* and it is not a mortgage foreclosure. You are still in the same problem. Your house is being foreclosed on you. What application would this have in a foreclosure of a land sale contract? **Senator Werk** said he will defer that question to someone else that might speak later and might have better knowledge of property conveyance. **Senator Werk** said he did not remember seeing anything about land sale contracts within those particular statutes.

Senator Davis said he noticed that the bill is adopting the definition of residential real property from liens mortgages and pledges section of the code and the code has a broader interpretation than my house. It applies to my house, if I occupy it or not and it can include up to fourplexes. You would have this applying beyond an individual and their home. It applies to individuals that are in business whom may have a fourplex that they do not live in, is that correct? **Senator Werk** answered that is correct. We want to have the same kind of notice and provisions to apply. We believe anyone above a fourplex is a business and you would have legal representation.

Senator Davis said consider he has a child that is struggling financially, and that child is a spendthrift, you have created a mechanism in this legislation that if he decides to help bail out a child, his child will now have a law suit against me under the Consumer Protection Act if he does not follow this statute. Why should he pass a statute that would create this type of litigation between family members? **Senator Werk** said we are talking about transfer of ownership of the property. If a family member grants a loan for \$50,000 it would not be covered. If all you are doing is providing a monetary bail out to your child, the only time there would be an issue is if the child provides the parent an interest in the property to guarantee the bail out. **Senator Davis** said the transfer of an interest in residential property could include a deed of trust. Let's say for the sake of argument the notice of default has been recorded, notice of trustee sale has been sent, and the child comes to the parent and asked for \$50,000 bail out and the parent has the child sign the promissory note and sign this deed of trust and the parent takes a lien against the property until the child can pay me him back. The parent has given to the child a law suit to sue the parent under the Consumer Protection Act unless the parent gives the notice in the paperwork of the property transactions. **Senator Werk** said the contractual obligation under the statute isn't broad and his impression would be that as a family transaction, that the bottom line is you would have to get far down the road for your family member to be suing you because you did not provide him notice.

Brett DeLayne, Deputy Attorney General, Attorney Generals Office, said it is the experience of the Office of the Attorney General that consumers usually make good decisions when they have adequate information and adequate time to act upon that information. Certain information needs to be disclosed so it mandates notices to be provided to consumers. The example of that is in the Health and Solicitation Act where consumers in the statute are required to be notified of the certain rights that they possess. Idaho Law has also recognized instances when a consumer needs time or we want to make sure the consumer has adequate time with respect to the transaction that is the subject. There are instances when there can be duress and we do not want a contract entered into under those circumstances to be enforced. The example of this is the door to door rule. The vacuum cleaner salesman is in the home of an elderly individual and will not leave until the sale is made. The sale can be canceled the next day after they wake up and decide that was a real poor decision. We have legislation in the law that the Legislature has determined that it is in the best interest of the state to mandate certain notices be made or mandate there is adequate time to be provided. We think these laws have been helpful over the years and have allowed consumers to protect themselves better than without the law.

Mr. DeLayne said our office has some experience talking to consumers concerning some of these mortgage foreclosure rescue promotions. I will explain just one. A consumer in foreclosure and was approached by a company that told them if you will quick claim your deed to us we will make the payments on your house and you enter into a rental agreement with us. We will cover your payments so you will not lose the house but you will now make rental payments to us and if you make enough rental

payments we will give you back the quick claim deed. The rental payment was more than what the consumers monthly payment was so within a couple of months this consumer could not make the payment and they were evicted as a tenant under her rental agreement. They lost their equity and were evicted out of their home. It is the Attorney Generals Office perspective that consumers in a stressful situation in dealing with financial setbacks, particularly related to their home, they might act more hastily than you would otherwise think they would. They may be more willing to believe that there is a way out and there might be opportunities for remorse or regret "I shouldn't have given my house away" I could have talked to someone. Secondly, that the consumer could use more information and that they need to talk to a professional, a lawyer or a financial professional to tell them what their options might be so they make a good decision and do what is best for them and their family. The Attorney Generals Office did propose the notice language that you have before you and we did use the term mortgage foreclosure partly because we thought the normal consumer would understand it better that way. It may technically not be a mortgage foreclosure it may be a deed of trust or something different but on the consumers level of understanding they would more readily identify this applies to me so that was the thought process of the Attorney Generals Office. **Senator Davis** said your office is as familiar with the power of the Consumer Protection Act than any law firm in this state. **Senator Davis** said he had spoken to **Senator Werk** about the application to family members and **Senator Werk** had been unwilling to provide for an exclusion to families in this legislation. Does the Attorney Generals Office believe that the Consumer Protection Act should apply in this circumstance as between family transactions? **Mr. DeLayne** replied no it should not apply. That would be for this Committee and the Legislature to determine with the respect to any exclusions and our office does not take a position on it.

Mike Larson, Consumer Finance Bureau Chief, Idaho Department of Finance, said this legislation does not really affect the Department of Finance statutes that we have regulatory authority over, but we do receive telephone calls from consumers who find themselves in a difficult situation with lenders in regards to their homes and find themselves in a delinquent circumstance. Our office will look at these cases to determine whether there is anything in the conduct of the individual or business being complained about that has anything to do with the statutes where we have oversight. Usually we find that it does not apply to our statutes. If we conclude that there might be some form of deceptive conduct we will refer these consumers to the Attorney Generals Office for review under the Consumer Protection Act and for whatever action their office deems to be in the public's interest. In 2007 the Department of Finance received six foreclosure rescue type of complaints from consumers in Idaho and in 2008 we have received one complaint. These complaints can be compelling types of situations where individuals for one reason or another claim that they did not understand what they were doing and they had ended up signing over ownership of their home to a company or individual in return for a promise to be able to avoid foreclosure. The Department of Finance is in support of the concept of the notice being proposed in this legislation. Foreclosure rates are on the increase nationwide and it is

estimated right now there are 1.5 million home loans in this country that are seriously delinquent or in foreclosure. Idaho ranks very well among the states on those numbers. We expect that Idaho will experience an increase in delinquency and foreclosures. If this legislation becomes law it would be another tool in our tool box to help educate the consumers. Most individuals that come to us have let so much time pass that they are in a very difficult situation. They are to be moved out of the property by Sunday and they call us on Thursday. The Department of Finance has developed a brochure as an educational tool and there is information on our website to help consumers who find themselves facing the possibilities of foreclosure.

Senator Werk said this legislation again is a very mild approach in terms of providing some consumer protection, advocacy and education. As the foreclosure crisis gets worse it will be good for the state to provide help to the consumer. **Senator Werk** said he appreciates the concern about families. He said he wanted to try to characterize it as not as refusing to have addressed your concern, but that there were a lot of other concerns that needed to be addressed just to get to this point. I am asking the Committee to send this to the amending order because the amendments need to go into the bill in order for the legislation to be as we have talked about today. **Senator Werk** said if **Senator Davis** feels strongly and would like some type of family exclusion in the legislation we can easily provide that and I would be perfectly willing to look into the changes. We would need to decide the terms of what degree of separation represents family and there might be standard language out there to include in the bill.

MOTION:

Vice Chairman Coiner moved to send S1431 to the amending order. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

Senator Davis said with **Senator Werk's** commitment to me that we provide in the set of amendments, language for family definition exception, he supported sending S1431 to the 14th order of business for amendment.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2]

S1399

Relating to Property

Stan Smith, manager of a condominium association, said S1399 draft is an excellent beginning and needs very little modification in the future in presenting homeowners and condo associations, as well as people wishing to acquire interest in real property in a condo association, the opportunity to find out about that association before the purchase of property. He strongly agrees with **Senator Davis'** suggestion in section 2, portion d, where it indicates that 14 day notice of any meeting shall be given and additionally that shall contain the agenda. He happens to work with a homeowner association who has a scheduled monthly meeting together with annual meetings a very active association. The only thing that he saw here that would provide any technical problems is we actually

do not put the agenda out 14 days before the next monthly meeting. It is a standard meeting on a certain night and we post the agenda approximately a week in advance. As someone who deals with this on a practical basis it is a great piece of legislation and he appreciates all that the Committee has done to work on this bill.

Chairman Andreason stated he wanted to commend this class for the hard work and extensive research they have put in drafting this piece of legislation.

Chantal Kabel, Vice President for Students of Homeowners Rights, said that two weeks ago stood before the Committee to introduce a bill designed to protect basic American rights and homeowners living in neighborhoods or condominiums with residential community organizations. The bill is an amendment to *Title 55* which sets minimum standards for homeowner association meetings and invites its members to attend meetings and to have a say in the affairs of their neighborhood. After Aaron Hedges and I concluded our presentation, you voted to print the bill as long as we agreed to tighten up some of the language and clarify definitions. We are here today having met with **Senator Davis** and having made the requested changes and additions. Before you now is the original draft bill we presented two weeks ago along with new amended S1399.

Ms. Kabel said the bill started off several months ago as a senior class president project. We voted to help our student adviser, **Ms. June Sparks**, research state and federal open meetings law and find out what laws and regulations Idaho have in place to regulate HOAs. We found out that all but ten states have laws governing HOAs. Some states such as Nevada have volumes of laws on the books called uniformed codes. Senator Mike Schneider of Las Vegas stated that responding to calls from aggrieved homeowners and trying to reform state laws covering HOAs has become almost a full time job. Idaho has 2500 HOAs, nationally almost 60 million individuals live in neighborhoods governed by HOAs. Each HOA have their own sets of by-laws presented to them by the developer who built the community. We are not trying to solve all the problems and disputes out there. We have just concluded after researching what most other states have that it is time for Idaho to have a law setting minimum standards for homeowners rights with neighbors governed by HOA. It's American, it's Democratic and it is the right thing for Idahoans.

Chairman Andreason welcomed **Courtney Sparks, Boise High School Student and Member of Homeowners Rights**, to the Committee.

Courtney Sparks said while researching state and federal open meetings laws and the laws of other states regarding HOAs was just a beginning for our group. We interviewed HOAs homeowners and HOA presidents and took into account their concerns. Based on their stories the group added items such as executive sessions and guidelines for financial accounting. We feel we have a real good bill and we have witnessed the democratic system in action and have been very impressed. You will find in your report a list of all changes made since the meeting with **Senator Davis**,

Senator Burkett, and Representative Killen. The definitions in part one have been improved and added the definition for executive session which was a request of several HOA board members. This is language given to us by **Senator Davis** and **Senator Burkett** and based on Senate code for executive session.

Senator Werk asked **Senator Davis** under 2a where it addresses the requirement to hold at least one meeting each calendar year of all of the members. One interpretation of that would be each year you have to have a meeting that includes every member of the association and that if you could not get every member to attend you would be in violation if that term of the statute. Am I reading this correctly? **Senator Davis** said it would be incorrect to assume that he has offered all the wording in the bill. It is more accurate to say that with **Senator Burkett** and **Representative Killen** we met with the individuals you have referenced and we talked about some language exactly and others in concept. After the meeting, **Senator Burkett** together with others worked on some of the exact language that you are looking at here. **Senator Davis** said speaking to the 2a language said this is a legitimate concern and he certainly does not believe that is their intent. Mark that this needs to be modified. Subpart A, 11-20 are definitions, starting with 2 isn't the language that says they shall do anything. This just says that these are organic documents or by-laws will contain the following provisions. Subpart 3, this part of the bill states that if you don't do what is in 2 then this is the self-effectuating remedy. Other language changes: 14 days may be a problem, no greater than (no less than 10 and no more than 30 days). Nothing in here provides for consent to action in Lew of meeting, which is a very standard corporate way for a board to function.

Senator Werk stated that in the interest of time this legislation needs to go to the amending order and he believes that there is certainly a will in the Committee that this will end up being a good piece of legislation with a few more changes.

June Sparks, originator of legislation, stated informed her students of what had occurred to her with her HOA issue and she is very proud of the work they have accomplished. This has not been a fast process and has been months of researching other legislation from other states. Perhaps there is a way that we can make a few more little amendments instead of going back to the drawing board with these following amendments so it can finally proceed to the floor.

Senator Werk told **Ms. Sparks** he believes that is what the Committee is contemplating. Right now we have a choice of sending your bill to the floor with a do pass recommendation (with no more amendments). Your bill needs to go to the amending order just to incorporate what has been done.

MOTION:

Senator Werk moved to send S1399 to the amending order for language changes to finish up bill.

Senator Stegner responded we all appreciate your dilemma and your momentary panic concerning the time frame. He is concerned whether

this is the right piece of legislation for the State of Idaho. Do you know how many HOAs there are in the state at the moment? **Ms. Sparks** answered about 2500. **Senator Stegner** asked if we were to pass this that all of the organic documents of all the HOAs would have to be modified to make sure that this legislation would be in place, is that correct? **Ms. Sparks** replied that what they intended to do is just set the very minimal requirements. **Senator Stegner** said there is no current exemptions for any current homeowners exemptions from being affected by this particular language, is that correct? **Ms. Sparks** answered that is correct. **Senator Stegner** said what that means is that any HOAs in the state today would have to review their documents to see that this is followed. **Ms. Sparks** answered she would think so but a majority of HOAs have this exact language within their by-laws. **Senator Davis** stated many of the HOAs are non-profit corporations and the Attorney Generals Office has chosen not to participate in the regulation of them. **Ms. Sparks** said they studied the non-profit law in the state and found it to be very broad and goes way beyond what HOAs are all about and does not quite apply. **Senator Davis** said he does think **Senator Stegner's** point concerning paragraph three is an important one to note. Subpart 3, page 2, it says in the event that you have organic documents that provide a lower standard of notice and participation than those organic documents are statutorily raised to the requirements of Subpart 3. **Senator Davis** said Subpart 3 addresses "in the event that the forgoing instruments fail to incorporate one or more of the foregoing provisions the omitted provisions as set forth in Subpart 2 shall be deemed incorporated as a matter of law" by this statutory change the language that you see would be imputed into the organic document. **Senator Werk** said we do not have that in the draft piece of legislation, has that been excised? **Ms. Sparks** answered when we met with you that was the change that you made. **Senator Werk** said it appears to him that we need a little more ripening here and I withdraw my motion to send it to the amending order. Could we hold this bill over to the next Committee meeting? **Ms. Sparks** asked Mr. Chairman if it would not be a requirement for the students to come back for us to look at this again. **Chairman Andreason** said he would like them to have the opportunity to review the work that has been done before we meet again. **Senator Werk** stated that he would assure **Ms. Sparks** things can get done quickly in the Legislature when need be. **Ms. Sparks** said that on Subsection 3 we do have the longer paragraph or we have the shorter paragraph that covers all those things and it has not been an issue if your organic documents don't have at least this much you just bring them up to parr. When we met with **Senator Davis** he asked us to simplify and make things clear because all the extra language led to extra questions. **Ms. Sparks** felt that the work has been done to a great extent the bill itself is clear enough. **Stan Smith** said he appreciated **Ms. Sparks** struggles here and he also appreciates there questions. He comes from real estate brokerage, banking, lending and title and understands what you are saying in these important factors. **Mr. Smith** asked if the Committee can confirm that if **Ms. Sparks** adds a couple of paragraphs for clarification that will not be putting a nail in the coffin of the legislation. **Chairman Andreason** reassured them that we would get it doctored up and get you another draft for your review and bring it back to

the Committee.

Senator Broadsword said that she wanted to compliment both the students on their excellent job of presenting before the Committee. We have individuals come to this Committee who are experienced that do a poor job of presenting. You should be commended for your performance. Keep up the good work, you have a future ahead of you.

Chairman Andreason adjourned the meeting at 3:22.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 21, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED **Chairman Andreason** called the meeting to order.

RS 17881C1 Relating to Volunteer Emergency Responder Disability Benefits

Senator Bastian explained that this legislation is to provide Workman's Compensation for Volunteer Emergency Responders.

UNANIMOUS CONSENT REQUEST **Senator Davis** requested unanimous consent to print RS 17881C1. No objections were voiced.

S 1399 Relating to Property

Stan Smith, appearing before the Committee on behalf of students. Mr. Smith deferred to Representative William Killen, who is a co-sponsor of the bill.

Representative Killen said this bill is to establish minimum standards for Homeowners Associations (HOAs), whether incorporated or otherwise, for representation of all members. This amendment relates to handling the executive session, provisions relating to definitions, clarifications relating to timetables and how this fundamentally works.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1].

MOTION **Senator Davis** moved to send H 1399 to the 14th Order for amendment. The motion was seconded by **Senator Cameron**.

Senator Goedde asked if the handwritten notes on line 15 will be incorporated into the amendment? **Representative Killen** answered that it will be incorporated.

Senator Davis said the sponsors may want to add an addition about providing for them having authority to consent to action in lieu of meeting on some matters, particularly banking related transactions with a duty to provide a report back at their next scheduled meeting. This had been discussed previously.

Senator Bilyeu asked about page 2, line 3 that says that a "requirement that a full accounting of finances....shall be provided to any member requesting the same at least once a year." She asked if this means that a member can request this just once a year, or does it mean that the homeowners association could wait a whole year before giving it to the person requesting it? **Representative Killen** said he sees the issue. His recollection of the draft is that it isn't uncommon to have only an annual reporting cycle for small HOA's, but perhaps this should be clarified.

Chairman Andreason called for a vote on S 1399. The motion carried by **voice vote**. **Senator Davis** will sponsor this bill in the 14th order for amendment.

H 414

Relating to State Employees

Michael Cooper, Bureau Chief with the Idaho Department of Agriculture, said this legislation amends *Section 67-5303, Idaho Code*. It will add a new paragraph (z) to make non-classified, personnel hired to carry pest survey, detection, control and eradication efforts authorized under the *Idaho Plant Pest Act, Title 22, Chapter 20, Idaho Code*, except those positions involved in the overall management of a program. He said that the current administration wants these programs to be carried out under deficiency warrant funding which does not allow the hiring of full time classified employees. He explained that temporary personnel are used to conduct pest survey, detection and eradication programs. Temporary personnel are defined as those who are only allowed to work 1385 hours or less in one year beginning with their hire date, and these programs can last longer than 1385 hours.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Senator Davis asked if the terms pest survey, detection employees and supervisors were defined terms in *Title 22, Chapter 20*, or are they just general enough terms that there is confidence that this alone will take care of it? **Mr. Cooper** answered that the terms pest survey, detection and eradication are used frequently in the Idaho Plant Pest Act. He said he isn't sure if they are defined as such but they are generally used from state to state for this.

Senator Werk said he is trying to understand if the changes in this bill are necessary, or whether there are other alternatives that don't cause operational difficulties. It sounds to him that this is a perfect thing to be

outsourced rather than going in and creating a new area. Could this be done on a contract basis? **Mr. Cooper** said he has never seen a contract arrangement done on this in any state he has dealt with. Even in California, where some of the programs are huge, they hire temporary employees to do this. In Idaho they may only hire one or two people, but it can run from March through November. They really can't plan for these programs because they don't know what is coming. **Senator Werk** said he heard Mr. Cooper say that the nature of the complexity of the issues they are dealing with is increasing. When he looks at the section of code Mr. Cooper wants to add, he thinks there will come a time when some of the seasonal employees will need to be year around employees. He said he is trying to get comfortable with carving out an exemption when changing times will dictate other things within the department. **Mr. Cooper** said these employees will only be there as long as there is funding to support them. If it is a one-year survey program for a particular pest, they are told that when they come on board. The potato cyst nematode program is the first one they've run into so far that has been a multi-year program.

Senator Davis said when this nematode was discovered, the State of Idaho and the USDA spent a lot of time and money to find the source. The world shut the market down for Idaho potatoes. It is a really big deal to the potato industry to be sure we have continued competent people who can help do this. **Senator Werk** said he understands it is very important, but he is trying to find the right way to deal with it. Is it in Code, or is there some other way to provide the kind of workers needed to get this done? **Senator Davis** said he doesn't know the answer, but trusts that the Department examining it knows that what they are currently doing isn't enough. They need to have more flexibility. Everyone is hopeful that Idaho will be able to work past this issue. In years to come this Statute may need to be modified, and this may be nothing more than an interim step, but this gives the Department the ability to hire help when it is needed and not keep them around during the time they can't use them.

Senator Coiner said it doesn't make any sense to have people working on a problem up until the last month and then let them go only to hire new people without continuity. Workers need to be able to start working on a problem and see it through to its end. This will probably result in a cost savings.

MOTION

Senator Coiner moved to send H 414 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Davis**.

Senator Broadsword asked about page 2 in the first paragraph. She asked when legislation comes to the Committee that hasn't been opened in quite awhile, isn't it a cost saving to do updates at that time? It seems to her the reference here to an election of August 1991 is outdated and should be crossed out. **Senator Davis** said it is his understanding that some of that still may apply to employees that are out there. He doesn't know if that is the case here or not. **Mr. Cooper** said the Legislative Services Office has reviewed this.

Senator Cameron asked if the reason this bill shows no fiscal impact is

because the Department is already hiring these people, but have just hired different ones to get around the way the law is currently drafted? **Mr. Cooper** said that is correct. **Senator Cameron** said to refresh the Committee's memory, there is a limit by which a temporary employee can work for the Department before they qualify for Public Employee Retirement System of Idaho (PERSI) benefits. What is that? **Mr. Cooper** said he doesn't know what the threshold is but there is a different law that covers that.

Senator Werk said the personnel laws and statutes in *Title 67, Chapter 53 (31)*, defines seasonal appointment as permanent in nature which has intermittent work periods throughout the year. He said he is wondering if there is a seasonal appointment in Statute that allows appointment of people with intermittent work periods, why we need this bill? **Senator Davis** said these are not necessarily permanent employees. **Senator Werk** said it sounds to him that people with specific expertise are being hired over and over again. If they are hired over and over would it make more sense to give them seasonal appointment rather than unclassified?. That way they will qualify for benefits, they have a better job, and their expertise is retained for when it is needed. **Mr. Cooper** said in that example, in the nematode program, the Department would have had to come and ask for as many as 30 or 40 full time employees (FTEs).

Chairman Andreason called for a vote on H 414. The motion carried by **voice vote**. **Senator Coiner** will sponsor this bill.

H 454

Relating to the Board of Morticians

Roger Hale, Representative for the Bureau of Occupational Licenses, said this bill will add the requirements of assistance in making 25 funeral arrangements and conducting at least 25 funerals to the requirements for licensure as a mortician. This will qualify the licensee to fulfill this scope of practice and to protect the public. There is no fiscal impact on the general or dedicated funds.

Chairman Andreason said Representative Black and he met with the funeral directors and morticians on three different occasions and were very pleased when they reached consensus on this. It wasn't easy for them to do that.

Senator Davis asked what a funeral arrangement is and what is conducting a funeral? **Mr. Hale** said the arranging part is meeting with the family and dealing with the arrangements for the actual funeral. The conducting part is where the mortician actually is there during the funeral and conducts the ceremony. **Senator Davis** asked if there are individuals who aren't inclined to work with families or are not great speakers and hesitate to conduct a funeral, but they have a respect for those who have passed on and want to help with the embalming? Can they be a professional licensed embalmer and is that recognized in the State of Idaho? **Mr. Hale** said there is no licensed embalmer status. Mortician is the highest level of licensure. Within that scope they are not only able to embalm, but also to arrange and conduct funerals. The Board wants them to be trained in all aspects, but they may choose not to do anything other than embalm after the training.

Senator Cameron said the language says 25 funeral arrangements and conducting at least 25 funerals. Is it the intention of the language to make sure they have done 25 of each or 25 combined? **Mr. Hale** answered that the intent is that they do 25 of each. **Senator Cameron** said he doesn't know where the 25 number comes from, but in his experience most often funerals are not conducted by the mortuary but are often conducted by a priest or bishop. How does that count if they are participating in that service that is more religious? **Mr. Hale** said the language talks about assisting. The intent is not that they do it by themselves. In the context of religious based services, the mortician is still in charge of the funeral generally. **Senator Davis** said this can be read as Mr. Hale indicated. He said it could also be read that assisted related to the first word and not the second.

Senator Bilyeu said she also questioned the requirement to conduct 25 services. She believes a different word should be used for the word conduct.

Senator Goedde asked if this individual could be assisting with the arrangements and conducting the same funeral, so in theory he would only be involved in 25 funerals? **Mr. Hale** answered that is correct. **Senator Goedde** asked what is the difference between officiating and conducting? He said he assumes the minister would officiate and the mortician would be involved in all the arrangements which could be considered conducting.

Vice Chairman Coiner said under the definition of mortician this legislation says a mortician conducts, directs, or supervises a funeral service. So these are all the same thing.

Mr. Hale pointed out that the second page of the bill, line 14, has the same language.

Chairman Andreason said it was much easier dealing with funeral directors and morticians. In the past the funeral director was in the front room of the building and dealt with the family, the casket selection and funeral arrangements. This was a business. In the back room of this building was where the embalmer worked. He had a license to embalm and that was it. The funeral director could have both licenses and do everything, or the embalmer could have both licenses and do everything.

Senator Werk asked whether the Committee should send this to the amending order to add clarifying language or should they send this to the consent calendar? **Chairman Andreason** said he prefers it be sent to the consent calendar.

Senator Davis said if someone removes it from the consent calendar, it would have to appear in the Committee report that it came out of the Committee without recommendation. The Committee may want to send it with a do pass recommendation and with a recommendation that it go to the consent calendar.

MOTION

Senator Werk moved to send H 454 to the Senate floor with a do pass recommendation and that the bill be sent directly to the consent calendar.

The motion was seconded by **Senator Cameron**. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill.

Senator Broadsword requested that when the bill drafter writes a Statement of Purpose he make certain that it makes sense.

H 455

Relating to the Board of Barber Examiners

Mr. Hale explained that this bill will remove the language which requires the examination to be conducted by the Board so that a third party exam administrator may be utilized.

Chairman Andreason asked if the examiner would be hired by and represent the Board? **Mr. Hale** said the examiner would be approved by the Board.

Senator Davis noted that the language of the bill deletes the definition of "successfully passed" and yet there are references elsewhere in the bill to that. He asked how they are addressing this definition? **Mr. Hale** said they would adopt a rule that would set the actual pass grade. **Senator Davis** asked if Mr. Hale has the statutory authority to do that? **Mr. Hale** said he believes so. **Senator Broadsword** said it says so on page 3, item 4, line 17 through 20.

MOTION

Senator Davis moved to send H 455 to the Senate floor with a do pass recommendation and that the bill be sent directly to the consent calendar. The motion was seconded by **Senator Goedde**. The motion carried by **voice vote**. **Senator Davis** will sponsor this bill.

Senator Broadsword requested that when the bill drafter writes a Statement of Purpose he make certain that it contain the name of the Board being affected. **Mr. Hale** said they did change it in the House so this must be an old copy.

H 492

Relating to the Idaho Residential Care Administrators

Kris Ellis, Representative for Idaho Health Care Association, stated that currently the Board is offering only one exam, known as the NAB, to applicants for licensure. This exam does not test the applicant's knowledge of the rules and regulations of Idaho, as required by law. Because the NAB exam does not test to Idaho standards and is also very expensive, it is the intent of this legislation that the Board will approve other exams that will meet the criteria of this law. Headmasters, the company who developed the CNA exam in Idaho, has agreed to develop, free of charge, an exam for Residential Care Administrators that will test the applicants' knowledge of Idaho rules and regulations. There is no impact to the general fund.

MOTION

Senator Broadsword moved to send H 492 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bilyeu**. The motion carried by **voice vote**. **Senator Broadsword** will sponsor this bill.

MOTION

Senator Broadsword moved to approve the minutes of February 5, 2008. The motion was seconded by **Senator Goedde**. The motion carried

by **voice vote**.

ADJOURNMENT Chairman **Andreason** adjourned the meeting at 2:43 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 26, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order.

S 1393 Relating to Labor

Alex LaBeau, President of Idaho Association of Commerce and Industry (IACI), said this bill provides that an employer may enter into agreements with key employees and key independent contractors to protect a company's legitimate business interests. The legislation defines "key employees" and "legitimate business interests" and creates rebuttable presumptions as to the terms of the agreements. There is no impact to the general fund. He discussed each section in the bill.

Senator Werk said he wanted to make sure background has been provided. He asked if it is correct that employers and employees can enter into these agreements right now? **Mr. LaBeau** answered that is correct. **Senator Werk** said there are 100 years or more of jurisprudence that has interpreted these agreements and many rulings have come down in court that have guided case law on how these things are interpreted. That hasn't changed, has it? **Mr. LaBeau** said he would defer that answer to Jeremy Pisca.

Jeremy Pisca, Attorney representing Melaleuca, said there has been 100 years of jurisprudence, but as with any common law, it is a moving and evolving guideline. This Statute doesn't do a lot more than codify what the case law is. They patterned this bill after a number of states that have Statutes in place like this; primarily, the State of Michigan.

Senator Werk said he sees a disconnect in two sections of this legislation. In Section 44-2702 "key employees" are defined very broadly. Section 44-2704 (5) makes it a rebuttable presumption that someone in

this particular category is a key employee. Why is it a rebuttable presumption for this particular subset of employees and could you explain why it is important that it be a rebuttable presumption as opposed to the current state? **Mr. LaBeau** said that there are two parts to Section 44-2704. Section 44-2702 simply outlines what a key employee may need to be a company. When they were setting up the rebuttable presumptions, they were trying to give a clear understanding of what the employer can expect. The employer has a reason to expect that, if they're in the top five percent they are a key employee of that particular company, if they have an agreement with them. However, they go on to say that to rebut such presumption, an employee or independent contractor must show that it has no ability to adversely affect the employer's legitimate business interest. This is talking about five percent of key employees giving employers some assurance that these are, in fact, key employees in the top five percent highest compensation, and there has to be some proof coming from the employee that they don't have any ability to harm the legitimate business interest as outlined in the definition.

Senator Werk said Sections 44-2704 (2) (3) (4) and (5), are creating rebuttable presumptions. By making these rebuttable presumptions it changes from the employer having to prove these things about their employee, to the employee having to rebut the presumptions in a Court of law. This switches the playing field, going from employers having to prove that an employee is a key employee, to the employee having to present their case against the rebuttable presumptions. He asked if he is misreading that? **Mr. LaBeau** said the whole point in moving forward with this legislation is the fact that the directions they have been seeing with some of the case law has caused concern that these agreements are not being held up. These are fairly common, and they believe the public policy interest in this is to protect a business' legitimate interest as they have outlined in the Statute. Therefore, they have set up a clear lay of the land whereby the employer can presume things are there, but it may be rebuttable and it is up to the employee to make the case that they cannot harm the business because they don't fit into these particular categories. They have also given a Court the ability to change or modify those agreements if they deem them unreasonable, to make them reasonable as necessary. So the whole thing must be taken in context. To address the larger public policy concern in Senator Werk's question, yes, they do want to make sure these agreements are deemed legitimate in the State of Idaho.

Senator Davis said he was asked the same question - what does a rebuttable presumption mean? He said he believes what Senator Werk said is accurate. They will walk into the court room and the Court will start with the presumption that if that fact exists, it will be enforceable but the employee will have the burden or responsibility to rebut it. The employer would have the duty to show that the employee is in the top five percent, but the employee could still rebut it by whatever excepting or exculpatory language is in there.

Senator Werk said Mr. LaBeau keeps saying that the terms in this bill are for the employers. He said he is struggling with that concept because he knows that Courts consider these coercive contracts. He stated that since

they consider them coercive contracts, they tend to view with skepticism the nature and restrictions in the contracts and you tend to lose. Mr. LaBeau keeps saying this is speaking to employers and what employers can do, but as Senator Werk reads this, it is direction to the judges, telling them what to think. **Mr. LaBeau** said what they are talking about is in the very first sentence where it says "may enter into." The likelihood of when these would occur are when the first employee and/or usually when they see someone move up within a company - where they will come in contact with things where they can actually do damage to the company by going to their competitor. It is not just the employer, it is a lay of the land issue. Regarding the term coercive contract - these are freely entered into by employees and employers and it is a fairly common interest. Yes, it is a legitimate public policy question that we are placing before this body and that is, are these, in fact, legitimate? He said the IACI's position is that they are and they should be constructed in a reasonable manner. This is legislation that they feel sets up a reasonable process and a reasonable contract that these employees and employers can enter into.

Senator Werk said he is sorry if Mr. LaBeau felt he was using loaded terminology. He said he believes coercive contracts is what the Courts use. It is a legal term. He said the "may enter" exists today - anyone can enter into or not enter into. The reason they are considered coercive is if an employer says the employee must sign it or not get a job there. He said in *Chapter 8 of Code, Idaho Trade Secrets Act*, really puts the hammer down on taking confidential information and misappropriating it and using it. In this document, S 1393, it isn't about those things covered by the *Trade Secrets Act*. This is saying if someone acquires skills in a company and they want to take those skills to another company, it is a rebuttable presumption and they can't do that, and this can be worldwide. This is going beyond the trade secrets that people want to protect, this is about skills people acquire and take from one business to another. This restricts their ability to become employed in their field of work. He asked Mr. LaBeau if he has a different interpretation?

Mr. Pisca said he feels that this is taking a very narrow section of employees and confusing it into everything under the sun. This bill does two things. First, lines 21 through 25 codify what the Courts have said -the Courts in the State of Idaho have already confirmed that these contracts are enforceable, that businesses do have the ability to protect their legitimate business interests. Line 17 says it is dealing with key employees or key independent contractors. For all of the 99.9% of employees, everything they know today exists tomorrow. But with regard to key employees or key independent contractors, they will receive more strict scrutiny under this legislation. Line 17 says they may enter into written agreements. Mr. Pisca believes the term Senator Werk was referring to is contract of cohesion. This isn't talking about coercive contracts; no one signs these with a gun to their head. It is clearly a choice that the employee enters into with the company. The company wants to grow that employee and place them in a position of trust, and will depend on that person - pay for education and push them out in front to become the face of the company. All this legislation does is say if the company has paid for education, put them at the forefront of the company, and they are that key independent contractor or key person, it is not fair

that they take that information and use it directly against the company. Line 21 says they are enforceable so long as it is reasonable as to duration. The Court has to find that it is reasonable as to duration, geographic area and type of employment or line of business. It must be narrowly applied to the direct line of business. The Court still has to find, as it says on line 23, that it does not impose a greater restraint than is reasonably necessary to protect the employers legitimate business interest. It cannot be unreasonable.

Mr. Pisca said the next thing this legislation does is to define what a legitimate business interest is. It is not just trade secrets. Vendor lists, customer lists, and supply information are not trade secrets. So this is saying that if someone is pushed to the front and made the face of the company, companies have some ability to protect their legitimate business interests. In line 33 it states these key individuals have gained a high level of inside knowledge. That is another level the Court must find. Lines 8 through 33 on page 2 of the legislation are guidelines, and the employee can challenge these. This bill is just a codification of what the Supreme Court said, a definition of what the legitimate interest is, a codification of the fact that the blue pencil doctrine exists, and the Courts have ruled that it does exist and they have the power to use it. Then it gives guidelines so that the employers and employees know exactly what the rules of the game are, and it gives the employees the options to say it is ridiculous.

Senator Werk said he appreciates all of that, but one thing that came out strongly in Mr. Pisca's presentation is that this already occurs in the Courts. They enter into these agreements, the Courts interpret those agreements, the Courts develop intent of both parties, so the easy question to ask is what is wrong? Right now the Courts have 100 years of jurisprudence in which they've decided how to interpret these things. Judges are wise and can look at these agreements and hear arguments from both sides and determine what is reasonable. What this bill does is say that the Legislature and this Committee does a better job of doing that, so we will put rebuttable presumptions in here and do a bunch of definitions so you'll know what is really happening. He said he hasn't yet heard a problem expressed. This is shifting the playing field onto the employee, and he doesn't see why that is needed or what benefit there is to our workforce in Idaho. **Mr. Pisca** responded that they should have addressed this when they first brought this legislation. There is a problem. The Courts have said that these are enforceable and that businesses have the ability to protect their legitimate business interests. Even though the Courts recognize this, they have stepped back and said they aren't going to do it. If two people enter into a contract voluntarily, Mr. Pisca thinks the intent of the parties ought to be carried out - especially with regard to key employees and key independent contractors. If the Courts recognize your rights, but won't enforce them, that is the problem and that is what we're attempting to resolve. With regard to definitions and rules of conduct, the Committee does that everyday in every single bill. This bill is asking for some written, published guidelines so both parties know what they're getting into. **Senator Werk** said what Mr. Pisca just said is that the Courts step back and don't enforce, but they don't step back in a vacuum

and abdicate their role, they step back because this is a contract that is coercive in nature and they are going to protect the employees in an extra measure because of that. He said he still hasn't heard anything that convinces him otherwise, but appreciates the presentation.

Senator Bilyeu asked for an example of a business or businesses in Idaho that has been harmed by not having this legislation in place? **Mr. LaBeau** said he would have to look at case law from a number of cases that have occurred, some unpublished, so he doesn't know the broad scope. **Senator Bilyeu** said then the answer is no, you cannot give a list of businesses? **Mr. LaBeau** said the principal concern by the business community is that these types of agreements need some sideboards. The concern is that these agreements are not being enforced.

Senator Bilyeu asked about Section 44-2704, line 28 and 29. She said it talks about rebuttable presumption, and specifically the "independent contractor who is among the highest paid five percent of the employer's employees or independent contractors." To her this says this employer could have a couple of contractors and it could be the highest one paid, but still not really reach a five percent, but they could be affected by this. **Mr. Pisca** gave an example of a Supreme Court case where an engineering firm was hired to create a six card shuffler for a casino. The engineering firm hired an independent contractor and paid them lots of money to work with them to create this shuffler, but as a condition of employment they had to agree not to work directly for the casino or any other client the engineering firm was specifically engaged in engineering projects for. The independent contractor created the shuffler, and the casino asked him to work for them. The engineering firm sued to stop the contractor from going to work for one of its clients. The Courts said the engineering company absolutely had a legitimate business interest and they had the right to protect that client relationship, but we are not going to enforce it. As for the five percent employees and the rebuttable presumption, that was something that during the testimony and debate last year, they were told by the Legislature would give them more comfort that they were only talking about the highest paid employees or contractors. **Senator Bilyeu** asked if this company was from Idaho? **Mr. Pisca** said it was.

Senator Werk asked that Mr. Pisca identify for the Committee who he is representing. **Mr. Pisca** stated he is representing Melaleuca, a company that has been affected by this.

Senator Bilyeu asked who decides that an employee is a key employee? **Mr. Pisca** said this is covered in the Definitions of the bill. He said in his mind, as an attorney representing either an employer or an employee, he will look at the conduct of the employee and will make a determination as to whether or not they fit the definition. The decision could be made at the outset, but it is something that people need to take a hard look at before they attempt to file lawsuits to enforce these contracts. **Senator Bilyeu** asked how many key employees could a business have? **Mr. LaBeau** said it will vary based on the type of business that they are engaged in. He said this bill also gives the employers a clear guideline of what they need to do to construct these in the first place to make sure they are

being reasonable with those key employees as they are deemed in this Statute. **Senator Bilyeu** said that when employees work for a company and they may get excited about the company and have some new ideas. Doesn't this really have a chilling effect to those people who are employed as far as maybe starting a new business? **Mr. LaBeau** said he doesn't believe this would have a chilling effect on the entrepreneurial enthusiasm that may exist.

Vice Chairman Coiner gave an example of a car salesman working for a dealership who works to develop his client list, becomes a top salesman and is then offered a position with the dealership's competitor. He has generated the good will, but if he has signed this contract he cannot work in his community for 18 months doing what he is really good at. He asked if this is a viable circumstance? **Mr. LaBeau** said that is entirely possible, but are we talking about protecting the legitimate business interest associated with that? An example of that occurred here in the Boise Valley with a weather caster who was prevented from working for a competitor, who they were ultimately hired by, for a period of six months. This is not an unusual thing. There is nothing that would prohibit the new business from buying an employee out from the company he works for. **Mr. Pisca** stated that, regarding a general sales person, he doesn't believe this Statute would ever apply to them. It may be different if a company has cultivated an employee who has a direct relationship with a huge account - for instance specializing in diesel trucks sold to Western Construction. Those situations are closer to being involved in this. However, it must be reasonable.

Chairman Andreason said after reviewing this legislation he understood that it had to do with secret information. He told of a personal experience he had.

Senator Davis said the language that is appropriate to re-emphasize is in Section 44-2702 (1) where it says "as a result, have the ability to harm or threaten an employer's legitimate business interests." This strikes at the heart of what Vice Chairman Coiner said.

Senator Werk said if the top salesman is generating all the leads, it would legitimately harm your business if he went to work next door.

Senator Davis said nothing here says he has to stay at that location. An employee can quit and go to work for someone else. The absence of his employment is the harm.

Senator Werk said one thing that is really bothering him about this legislation is that what it is doing is providing rebuttable presumptions for employers to protect the employer's interest. The employer would normally have to prove their case, but this changes it so that the employee has to prove his case. A company has much more in the way of resources than an employee. He said he heard Mr. LaBeau and Mr. Pisca say that they want to have a defined playing field, so he is wondering if they would be willing to amend the bill to make the rebuttable presumption be what the employer needs to prove, so there is more protection for the employee. **Mr. LaBeau** said he doesn't believe that is necessary because this is talking about setting up clear lay of the land so that the employer

knows how to construct this in the first place. If they are unreasonable in any circumstance, the employee can say that it isn't reasonable and the Court has the ability to amend it back to what is considered reasonable. He said the way this bill is constructed is the level playing field because it lines out what they feel is reasonable as a matter of public policy.

Chairman Andreason said for both the employer and the employee? **Mr. LaBeau** said that is correct.

Stephen Freiburger, President of a small engineering company, said he is opposed to S 1393. He gave examples and said the bill contains provisions that make it unfair and onerous to employees. He believes agreements like this can be made and followed with existing law.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1].

Senator Goedde said Mr. Freiburger pointed out page 1, line 19 and 20, where it talks about "after termination of employment." Senator Goedde said he knows of a case where a top salesman was selling for his employer and his employer's competitor at the same time. He asked if Mr. Freiburger thinks that is grounds for termination? If so, why would a non-compete agreement not hold up? **Mr. Freiburger** said he hadn't thought about that circumstance, that might be legitimate grounds for termination. He said he knows of a circumstance where an employee was fired through no fault of his own, and the employer tried to enforce this even though he wasn't going with the competitor. There are ethical rules to follow in his field (engineering), and if someone did that in the engineering field they would be in jeopardy of losing their license. **Senator Goedde** said not everyone is ethical.

Senator Werk thanked Mr. Freiburger and said what Senator Goedde said is valid, but this bill is a broad brush that says after termination, these agreements can be enforced. That means if an individual is fired or laid off, the rebuttable presumptions will apply and it doesn't matter what the circumstances are.

Skip Sperry, Representative for J-U-B Engineers, said J-U-B Engineers is a civil engineering firm here in Idaho and they employed Mr. Freiburger some time ago. He said he has been practicing employment law for approximately 15 years, primarily on management side, some on employees' side. He said he has yet to be able to draft a non-compete provision that he can say is enforceable - after drafting 100's of provisions to meet particular circumstances. What is predictable is that the Idaho Courts, without guidance from the Legislature, will look for any means to avoid this particular kind of contract. There is 100 years of jurisprudence, but he hasn't seen it applied in a way that is consistent or that provides any predictability for business and commerce in the State of Idaho. It is predictable for employees because the agreements are not enforceable. There are two competing interests: the ability to contract with another person and anti competition. Courts in the State of Idaho ignore the ability to contract and favor the restraint of trade. S 1393 gets us back on track. Some guidance is needed.

Senator Stegner asked Mr. Sperry if he is employed by J-U-B Engineering or is he a private attorney? **Mr. Sperry** said he is a private attorney. **Senator Stegner** said his argument suggests that there is an equilibrium between employer and employee when they enter this contract. That really is in question because the employer generally has the upper hand and the employee wants a job and will sign just about anything to get a job. So the assumption that the validity of this very fair contract is logically skewed because Mr. Sperry isn't viewing it with the same objectivity that many people might. The question is whether or not these contracts are entered into fairly in the first place, because of this unequal position that both parties enter the agreement under. He asked Mr. Sperry to respond to this. **Mr. Sperry** said there are very few circumstances where two parties who contract have equal bargaining power. If an individual doesn't like the terms of a contract he has the ability not to sign the contract.

Mr. Sperry told a story of a client of his who had a veterinary clinic and an employee who signed an agreement which said she wouldn't work for a similar practice within five miles. She purchased a clinic a little over five miles away, took two employees with her, and in a period of four to six months took 81 clients from his clinic. The client sued her and the Court refused to blue pencil this agreement. The State of Idaho is not trying to enforce the intent of the parties to the contract at the time they contracted. That is why he and his client support this legislation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 2]

George Wagner, J-U-B Engineers, Inc., said he supports this legislation. He said when they hire people they have them sign a confidentiality agreement and a non-competition agreement. J-U-B considers hiring employees as an investment with an understanding that they have a deal with the employee. He said he feels many times the applicant has the upper hand in negotiating these contracts. This isn't a case where someone is coerced into going to work for them. Employers are competing for employees too. They are only asking that a deal be a deal when investing in employees. This legislation is needed because today there is no way to know if there truly is an agreement when a contract is signed.

MOTION

Senator Davis moved to send S 1393 to the Senate floor with a do pass recommendation. **Senator Cameron** seconded the motion.

SUBSTITUTE MOTION

Senator Werk moved to hold S 1393 in Committee. The motion was seconded by **Senator Bilyeu**.

Senator Werk said one thing that struck him, besides all the arguments already expressed, is that in the very first section where the bill says an individual can be fired or laid off and someone can enforce a non-compete agreement against that individual, this legislation codifies that. He hopes that the Committee will support the substitute motion.

Senator Davis spoke to Senator Werk's statement that if an employee

gets fired they shouldn't be bound by the terms of the employment agreement. That is the law today. It doesn't matter whether an employee quits voluntarily or gets fired, if an agreement is enforceable, it is enforceable.

Senator Stegner called for debate on the motion. He said he will support this bill where he didn't last year. He thinks this is a very sincere attempt to try to put side boards on this issue. He is comfortable with the definition of key employee and the rebuttable presumptions that have been added to the legislation. He said that while he is troubled from time to time about the relationship between employers and employees and how they enter those contracts and relationships, he believes this is so much better than what they saw last year. He is convinced that it deserves further consideration of the Legislature. To move it forward in that process he will vote in support of the bill.

Chairman Andreason called for a roll call vote on the Substitute Motion. Senator Bilyeu : Aye, Senator Werk : Aye, Senator Broadsword : Nay, Senator Goedde : Nay, Senator Davis : Nay, Senator Stegner : Nay, Senator Cameron : Nay, Vice Chairman Coiner : Nay, Chairman Andreason : Nay. The motion failed by roll call vote.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Chairman Andreason called for a roll call vote on the Original Motion. Senator Bilyeu : Nay, Senator Werk : Nay, Senator Broadsword : Aye, Senator Goedde : Aye, Senator Davis : Aye, Senator Stegner : Aye, Senator Cameron : Aye, Vice Chairman Coiner : Nay, Chairman Andreason : Aye. The motion carried by roll call vote

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

MOTION **Senator Broadsword** moved to approve the minutes of February 7 and 14, 2008. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

ADJOURNMENT **Chairman Andreason** adjourned the meeting at 3:04 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: February 28, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:32 p.m.

Chairman Andreason welcomed **Ken McClure**, representing **Idaho Society of CPAs**, to the Committee to present H379.

H379 **Relating to the Practice of Public Accounting**

Ken McClure, Idaho Society of CPAs, said this legislation before you has been approved by the practicing accounts and the regulatory body. They have all agreed upon its language and are asking for your passage. It has been approximately 15 years since we have done any housekeeping on this legislation and things have significantly changed in the environment in which CPAs work and the business community in general. This legislation makes numerous technical revisions to the Accountancy Act. Most are minor and relatively "non-substantive." Two are substantive changes to bring the statutory regulation of accounting into line with current practices. The first recognizes that accounting may occur anywhere (inside Idaho or out) and allows persons licensed in another state to provide accounting services in Idaho without obtaining approval of the Idaho State Board of Accountancy as long as their principal place of business is not located in Idaho. They remain subject to the regulatory authority of the Board of Accountancy. The second substantive change recognizes that information discovered in a peer review can be a basis for disciplinary action.

Senator Bilyeu said to clarify the wording of requiring experience for licensure to be verified by an active licensee years, did that change? **Mr. McClure** stated there are two issues involved in those questions. First we have always had substantial equivalency. Which is someone who applies for an Idaho License by reciprocity can obtain that license by showing that

their training and experience is substantially equivalent to the requirements that are in place in Idaho. Secondly, as a practical manner State licensing requirements are all substantially equivalent at present so making the Board go through the process of verifying your experience as an accountant in Wyoming and the licensing that you went through in Wyoming would be equivalent to what applies to Idaho licensing.

MOTION: **Senator Broadsword** moved to send H379 to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Roger Hale, General Counsel**, representing **Bureau of Occupational Licensing**, to the Committee to present H452 and H453.

H452

Relating to the Idaho Contractors Board

Roger Hale, representing **Bureau of Occupational Licensing**, said this bill will change the compensation for members of the Board of Contractors to allow compensation at the rate of \$50.00 per day for conducting Board business. **Chairman Andreason** said does it just say that the board can raise it as high as \$50.00. **Mr. Hale** stated that the bill actually says \$50.00. **Vice Chairman Coiner** said he was looking for the fee but don't seem to find it. **Mr. Hale** stated that it is on the 2nd page, line 15. It just changes a subsection in the code. That is the *Idaho Code* 59-509 that reviews the schedule of compensation or honorarium per board member.

MOTION: **Vice Chairman Coiner** moved to send H452 to the floor with a do pass recommendation and be placed on the consent calendar. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

H453

Relating to Real Estate Appraisers

Roger Hale, representing **Real Estate Appraisers**, said this bill licenses and regulates Real Estate Appraisers of Idaho in three categories of licensure residential, certified residential and certified general appraisers. This Board has significant federal oversight under federal law and by the Federal Appraisers Subcommittee. This bill will allow the board some flexibility to consider disciplinary action of a real estate appraisers licensee in another state as grounds for discipline and add the right to refuse to issue or renew a license under disciplinary proceedings in order to protect the public. The board quite often would impose some type of educational requirement such as requiring an individual practice under supervision. This bill will also allow that examination fees be paid directly to the test administrator by the applicants. **Senator Bilyeu** asked how many real estate appraisers have been disciplined in the last five years? **Mr. Hale** answered that he did not know that figure. He could tell the Senator that in the last year there were a number of real estate appraisers that were disciplined for continuing education violations. Beyond that he suspected the board averages between five to ten disciplinary actions per year, but he does not have specific information on those actions. **Senator Bilyeu** said are you aware of any disciplinary actions besides continuing education violations? **Mr. Hale** said there are a number of other disciplinary matters that the board took beside the continuing education violations that were rather a violation of "use path" federal standards for

doing appraisals. **Senator Werk** said he wanted to make sure he understands Section 2 and to make sure the provision is actually necessary. If the individual is going to take the exam they would pay directly to a national administrator nothing would be going through the board concerning this fee. He said he did not know why the bill had a provision that says that individuals will have to pay the fee when if you take the test the administrator of the examination will charge a fee. **Mr. Hale** answered that the previous language set a cap on the examination fee of \$350. This is language that we are eliminating and we are simply trying to tie the fee to the national examination rate.

MOTION: **Senator Cameron** moved to send H453 to the floor with a do pass recommendation and be placed on the consent calendar. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Representative Schaefer** to the Committee to present HCR46.

HCR46 **Stating Findings of the Legislature and Rejecting a Certain Rule**
Representative Schaefer said this concurrent resolution would reject a pending rule of the Division of Human Resources which the House Committee held a hearing on these rules. We held the rules until we could gather more information to satisfy the committee. The Director of Human Resources requested to pull the rules and they would bring them back to us. **Vice Chairman Coiner** said that the Director of Human Resources asked that our Committee reject the rules.

MOTION: **Vice Chairman Coiner** moved to send HCR46 to the floor with a do pass recommendation. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

HCR47 **Stating Findings of the Legislature and Rejecting a Certain Rule**
Representative Schaefer said the concurrent resolution would reject amended portions of two subsections of a pending rule of the Department of Commerce relating to the Rules of the Idaho Regional Travel and Convention Grant Program as being not consistent with Legislative intent. This involves rejecting portions of Docket No. 28-0203-0701 subsection 2-22 the method of which grants would be handled. The effect of this resolution, if adopted by both houses, would be to prevent the amended language in the two subsections of the Department's rule from going into effect. **Senator Werk** said he believes the Committee rejected this same section of the rule.

MOTION: **Senator Werk** moved to send HCR47 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Senator Davis said he supported the motion if **Vice Chairman Coiner** wouldn't mind double checking to make sure this is a true statement that there is a problem with the rule and placing it before the Committee for consideration. **Vice Chairman Coiner** said the Committee discussed this subsection of the rule and voted to reject. He will check the rule.

Chairman Andreason welcomed **Jeremy Chou, Givens Pursley,**

representing **General Electric**, to the Committee to present H493.

H493

Relating to Insurance

Mr. Chou said H493 amends the surface contract section of the insurance code. Surface contracts are better known as extended warranties. They offer replacement, repair and maintenance for appliances and electronic goods as opposed to insurance policies which generally provide for indemnity. Extended warranties are not considered insurance policies and are exempt from the insurance statutes. Currently under Idaho Code extended warranties may be offered in only two instances. 1) manufactured defects and 2) manufactured defects as a result of normal wear and tear. It is often confusing to the consumers as to what actually constitutes normal wear and tear. They think once they buy this extended warranty it covers the damage resulting from an accident or from a power surge. This legislation allows a manufacturer to provide service contract coverage for the repair, replacement, or maintenance of a product for accidental damage or damage resulting from a power surge, not just for manufacturing defects or normal wear and tear. **Senator Broadsword** said does this mean that if she goes out and buys a TV she is going to get a call from the dealer where she purchased the TV to buy a service contract? **Mr. Chou** answered that no he did not believe so, especially if you were on the Attorney General's do not call list.

Senator Werk asked who are you representing today? **Mr. Chou** said he represents General Electric. **Senator Werk** said is there a definition for accidental damage from handling so the consumers will be able to know what these protections policies stipulate. **Mr. Chou** said that the policies do define those terms because they are important terms under the contract. **Senator Werk** asked would the contract list what was meant by accidental damage as opposed to some accident that occurs after you get the equipment home. **Senator Broadsword** asked would a TV being accidentally pulled over be considered an accidental handling? **Mr. Chou** replied that the accident would be covered under accidental damage. **Senator Goedde** said on Line 21 it starts off with an "and" are you sure that is not meant to be an or? **Mr. Chou** said we decided that we would leave the "and" in because it would allow companies to offer coverage from accidental damage and power surges in one policy if they chose to include both.

MOTION:

Senator Goedde moved to send H493 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Senator Werk said he would support the motion but he did want to get his opinion on the record that he sees this bill potentially as legislation that the Attorney General's Office might hear many complaints and there might be some legal activity associated with less than well-written policies and consumers that do not understand what they are buying when they purchase these service contracts. **Chairman Andreason** said he thought that **Senator Werk** you will find that the contracts will work well.

H522

Relating to Health Insurance Contracts

Ken McClure representing the **Idaho Medical Association** said the doctors in Idaho and other health care providers who bill insurance companies have difficulties with something called silent PPOs. A preferred provider organization (PPO) is a network of providers who provide care at discounted rates. Those doctors and health care providers agree to discount their fees in order to obtain preferred status with the insurer. This bill addresses silent PPOs which are claimed to be created when an insurer assigns a PPO benefit without the consent of the doctor. For example: I am a doctor and I would sign a PPO agreement and I would agree to discount my fees for Blue Cross of Idaho. I will do that because you will give me a preferred status with your customers. This does not happen with any of the Idaho based insurers but insurers in other states assign these benefits to third parties. Doctors don't even know about it until they see a patient who has coverage from Acme Insurance that they are not familiar with and they send a bill to the company and the company reimburses them something less than their usual discounted rate. The doctors billing office calls the company and says you did not pay the proper amount. The Acme Insurance Company says oh yes we did we are part of your PPO. We have a right to pay you less than your usual and customary charge. The doctor says he has never even heard of your insurance company. I am not part of your PPO and they say we obtained an assignment of the right to pay you less money from another insurance carrier. Sometimes these assignments are literally done by trick. We have cases in Idaho in which doctors are paid by a check from a carrier and on the endorsement line of the check it says that your endorsement in negotiation of this check acknowledges your acceptance to all the terms and conditions that can be found on our website, go visit it and you agree. The doctor should stop what he is doing and go to the website and see if they agree to the terms. That does not happened and then they find themselves later to have another assignee of the PPO agreement. This bill simply says the PPO contract itself says it is assignable. It puts that issue right in front of the insurer and the provider at the time of contracting. If they agree that it is assignable, then fine it is a contract. This legislation makes it clear that the insurer has to state in conspicuous and plain language that it is assignable. Subsection three is the provision that allows the Department of Insurance to send correspondence to an out-of-state insurance company who has violated this statute. Right now a doctor billing \$100 and the insurance company is supposed to pay \$80 and the patient is supposed to pay \$20, but the third party insurance company pays the doctor \$60 and the doctor tells the insurance company you shorted me \$20. They say tough. The disparity of bargaining power of that physician and the location of the defendant is such that the doctor writes it off and bills the patient for the extra \$20. **Senator Werk** said if he recalled correctly was this legislation reviewed by the Health Care Task Force. **Mr. McClure** said it was and it was approved by the Health Care Task Force.

Steve Tobiason representing, **Idaho Association of Health Plans and American's Health Insurance Plans** said we looked at this legislation last fall and we understood the primary concern in the legislation being if

one carrier has a contract and assigns it to some other third party entity without notifying the provider that is not fair to the provider. It is our understanding that this legislation deals exclusively with an assignment of provider contract by the insurer to a third party, and the term "assignment" does not include an assignment of the benefits of a contract to an employer, or other self-funded payer such as a Taft-Hartley trust, that contracts with an insurer or third-party administrator. If the bill applied when the insurer acts as a third-party administrator, the notice requirements in the legislation would become cumbersome and expensive. **Senator Cameron** said in the second sentence of your letter "although both associations are neutral, there have been concerns expressed by members of the associations concerning the language" could you be a little more specific. Are both associations expressing concern or is it an individual company? **Mr. Tobiason** said he reported to a regional director for AF in California. Over the last week he has received correspondence that some of the member companies have communicated their concerns about the TPA situation. **Senator Cameron** said most carriers who would be using a TPA (third part administrator) would be using a self-funded plan. Self-funded plans are exempt from state law, where is the problem? There seems like something changed on state law may somehow influence the Federal ARISA compliance. **Senator Cameron** said he could not think of a situation where they would be using a TPA for a fully insured product, which this legislation would only affect. **Mr. Tobiason** said if it is a ARISA plan this would not be able to affect because of the ARISA exemption under federal law. **Senator Cameron** said he cannot think of a reason why an entity would be self-funded and not be ARISA exempt. The whole purpose for being self-funded is to avoid state regulations, mandates, tribute tax and those are the savings. **Senator Cameron** asked **Mr. Tobiason** is your official position that you are neutral? **Mr. Tobiason** answered that is correct. **Senator Cameron** said that what you are trying to do here is hedge your neutrality in case you have other concerns down the road. **Mr. Tobiason** said no that is not correct. The concern we have is if you get down the road and there is an interpretation by the Director of Insurance that is different than our reason for neutrality on this bill than we may come forward and tell the Director the reason we didn't oppose this legislation is because this is how we understood the bill to be interpreted. If it was applied in a different context than the companies understood the language then we would come back with legislation at that point and request a modification because the legislation has a different interpretation than we understood it.

MOTION:

Senator Goedde moved to send H522 to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Pat Collins, General Counsel**, representing **Idaho Bankers Association**, to the Committee to present H523.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see

Attachment 1].

H523

Relating to Banking

Mr. Collins said this is a housekeeping bill in the Idaho Bank Act similar to the one we brought through last year. We picked out sections that could use modernization of the Idaho Bank Act which was completely recodified in 1979 and so naturally some termination has become dated. It also amends a section of the criminal code. Making it clear that a person who suffers economic loss because that person paid money to a crime victim to settle a claim arising from the crime is also a "victim", in whose favor a restitution order may be entered as part of the criminal's sentence. This change is a response to a recent Idaho Court of Appeals decision, Idaho v. Cheeney, which held that a bank which had paid money to its customer to settle a claim arising out of embezzlement by the customer's employee, is not a "victim" as defined by the statute and therefore cannot receive restitution from the criminal. Housekeeping change to the Bank Act include: Making it clear that in the event of any conflict between the Idaho Bank Act and the general business Corporation laws, the Bank Act controls. Eliminating an obsolete requirement that banks file their Articles of Incorporation in the county recorder's office. Eliminating obsolete capital requirements for establishing branch banks. Making bank reserve requirement under state law consistent with those under federal law. Correcting obsolete references to the reporting periods of banks. Clarifying the standards applicable to a bank's request for permission from the Director of Finance to repurchase some of its own capital stock, and removing the arbitrary limit on the amount of capital stock which may be repurchased and on the period of time it may be retained, and correcting an obsolete reference to the Uniform Consumer Credit Code. **Senator Davis** said his understanding of the right to recover is only if you make payments or pursuant to a statutory code of authority that arose from the crime. What if the statutes of limitations have expired on the torte but you still may have a banking customer who might have some applied contract period to the bank far beyond two years, would this language limit your right to recover your payment only in your torte theories, would you be precluded from making that claim? **Mr. Collins** said this existing language in the statute just above the new language would solve that problem because it already says "a person who suffers economic loss because such person has made payments to directly pursuant to a contract is a victim. We are adding torte or statutory claims.

Gavin Gee, Director, Department of Finance, stated their department supports the bill as **Mr. Collins** indicated they work closely with the association on the drafting of the legislation.

MOTION:

Senator Davis moved to send H523 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Colonel G. Jerry Russell, Director of the Idaho State Police (ISP)**, will present H496aa.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

H496aa

Relating to State Government and the State Personnel System

Colonel Russell said this bill amends *Section 67-5302 (20), Idaho Code*, with language permitting the definition of “overtime work” for those employees engaged in law enforcement, correctional and fire protection in a period of one hundred sixty-eight (168) consecutive hours upon emergency declaration by the Governor or with the approval of the appointing authority and the Board of Examiners.

ISP receives certain federal and other grants specific to funding overtime hours worked on certain highway safety projects. For example, the ITD Office of Highway Safety provides funds for extra traffic enforcement in active construction zones. These grants can only be accessed to pay for Trooper overtime hours on these projects. Officers may work these overtime shifts following their normally scheduled shifts any day of the week. An audit last year revealed that the practice of recording these hours as overtime at the point in the pay cycle that the hours were actually worked was in conflict with Idaho Code’s definition of overtime hours. When we adhere strictly to the Idaho Code definition, true federal overtime hours may be paid by the state at time and a half, while true state hours are paid at straight time by federal funds. Fewer hours truly worked on the overtime-specific projects are charged to the grant source.

This bill alters the definition of overtime work for law enforcement officers and others in that specific category to allow hours worked to be charged at the correct straight time or overtime rate at the point in the pay cycle that the work is performed. It allows the State of Idaho to receive full benefit of the federal and other funds specifically available for overtime work. It provides oversight and control of the time recording practice by requiring either a declaration from the Governor or approval from the Board of Examiners to charge the hours worked to the fund source. ISP would present a list of the grants and their conditions to the Board of Examiners at the beginning of each fiscal year to obtain that approval. The emergency clause allows ISP the ability to immediately begin to charge directly to the overtime-funded grants and projects. This is important because out of \$660,500 of identified federal overtime last year, more than \$300,00 was charged incorrectly among the federal grants and other funding sources, due to the statutory definition of “overtime”.

Senator Broadsword said there is no emergency clause in the legislation. Was your intent to have this bill take effect immediately or were you willing to wait until July 1, 2008? **Colonel Russell** answered that he believed there was an emergency clause in the legislation, but they could wait until July 1, 2008. **Senator Davis** said he understands this is really limited to participation in grants and will not take dollars or indirectly increase the demand earning from appropriation. **Colonel Russell** answered that is correct.

MOTION:

Senator Davis moved to refer H496aa to the 14th Order for possible amendment to add an emergency clause. The motion was seconded by **Senator Werk**. **Senator Broadsword** said our agenda does say that this

bill is amended and we did not receive an amendment with the bill. She wonders if the emergency clause has already been added in the amended copy that was not provided to the Committee. The Committee Page said the amendment was not available in the Bill Room. **Senator Davis** said the legislation might be already engrossed and will be out on the Internet let's look real quick to see if it has been engrossed. **Senator Werk** said the amendment to the bill was an emergency clause. **Senator Davis** said with the permission of the second he would like to withdraw his motion.

Senator Davis moved to send H496aa to the floor with a do pass recommendation. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Senator Broadsword said the agenda does say that the bill is amended and they did not receive an amendment with the bill. She wondered if adding the emergency clause has already been done. **Senator Werk** stated the amendment was an emergency clause added as Section 2.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Chairman Andreason adjourned the meeting.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 4, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:32 p.m.

Chairman Andreason welcomed **Senator Bastian**, to the Committee to present S1444.

S1444 **Relating to Volunteer Emergency Responder Disability Insurance**

Senator Bastian said the proposed bill would amend the Workers Compensation Act to provide a minimum weekly benefit based on 67% of the average weekly state wage for volunteer emergency responders who are injured or disabled in the line of duty. Rural communities across the state need to provide various types of benefits to volunteer emergency responders as a recruitment and retention tool. Statistics show that the number of volunteer responders has declined over 10% during the last 20 years, yet we rely on these volunteer emergency responders now more than ever. These responders risk their lives every day and have earned the right to receive fair benefits. Passage of this bill will address both of these issues and enhance the ability of communities to recruit and retain volunteer emergency responders. Volunteer emergency responder includes volunteer firefighters, volunteer/reserve peace officers, and volunteer EMT/EMS personnel. Current workers compensation disability income benefit is a minimum of 45% of the volunteer emergency responder's average weekly wages in their regular employment. Most Idaho volunteers are self-employed farmers, ranchers, and small business owners in rural areas. Disability compensation for all volunteer emergency service responders will be a minimum of 67% of the weekly state income average as published by the Idaho State Compensation Fund for the first 52 weeks that the volunteer is unable to perform his regular job if injuries are sustained in the line of duty as a volunteer. This benefit will be funded through workers

compensation premiums paid by organized fire and police districts/departments throughout the state. No state funds are needed.

Chairman Andreason welcomed **Greg Redden, Executive Director, Idaho Volunteer Fire & Emergency Services Association**, to the Committee to present on S1444.

Mr. Redden said since many of our Idaho volunteers are self-employed farmers, ranchers, and small business owners in rural areas based on their current earnings can be reduced by depreciation and business expenses and can take a lot of time to determine. When one of these individuals gets hurt in the line of duty as a volunteer for their community when they go to prove that income it takes time. That is why we have proposed a defined benefit of 67% as a minimum for the first 52 weeks or their current weekly wage. For example, if a volunteer fireman in Emmett was a full time employee for Hewlett-Packard, his disability benefit would be based off of his permanent job salary. If another volunteer fireman is a farmer in the Twin Falls area then obviously his disability benefit could be based on the 67% of the state weekly averaged defined benefit.

Chairman Andreason said he thought that the statute stated that they would get a disability benefit based on a percentage of their salary. **Mr. Redden** said the minimum disability benefit based on either your permanent job salary, or in the case of self-employment, the defined 67% of the state weekly income average based off of this code and processed by the State Insurance Fund.

Senator Goedde said Workers Compensation Law has always been set-up to make an injured worker whole. There has never been a defined benefit to his knowledge and this would be the first incursion on providing a defined benefit. Could you tell me who else might get a defined benefit such as this? **Mr. Redden** said the volunteer firemen and emergency medical responders people are putting their lives on the line everyday Responding to businesses and homes that burn down or accidents as you drive on the state's highways. We believe that these volunteers deserve a benefit that is easy to understand and has a benefit to it if they get injured in the line of duty. **Senator Goedde** said he is not suggesting that what you are proposing here is a bad thing, but this would be setting a new precedent and he could see any number of additional volunteers asking for the same benefit and it does open the system to abuse. Someone who is retired and is making minimum benefits could stand to gain rather than to be made whole. **Mr. Redden** said that was what Idaho Workmen's Compensation was concerned about and that change in the wording that they put in "publicly employed" which takes in volunteers that are part of a department and publicly employed is defined in that sentence on page 4, line 38.

Senator Goedde said you indicated that you have met with Mr. Alcorn three different times, is there a reason why you haven't changed 12 months to 52 weeks, which is the language that is provided in the Workers Compensation Statute? **Mr. Redden** replied that they had changed that in the last amendment that **Senator Bastian** requested and that is on page 6, line 38. **Senator Bastian** said these are a set of

amendments that need to go with the bill and the bill needs to be sent to the amending order, but we have the language here. On page 6 we changed *Section 72-409, Idaho Code*, 7 it would read in the case of a volunteer emergency responder the income benefits in the first 52 weeks shall be based on the average weekly wage in his or her regular employment or 67% of an average weekly state wage. **Senator Stegner** asked how this gets funded? **Mr. Redden** said workers compensation premiums are paid by class codes. The fire districts and departments pay this class code. **Senator Stegner** said for example the Volunteer Fire Department of Homedale have workers today that volunteer for the Homedale Fire Department have workers compensation? The Homedale Volunteer Fire Department is a subdivision of the City of Homedale and they already pay a workers compensation premium for these particular workers so they are covered. Would the passing of this legislation increase the premium to the Homedale Volunteer Fire Department? **Mr. Redden** answered possibly if you look at claims history. For example, if there are five workers compensation cases per year from volunteer fire departments, they would be paying an increased benefit because of this amendment. The cost increase would be shared equally among all the volunteer fire departments in the state. **Senator Stegner** said based on the passage of this bill, would there be an increase in uniform statewide rate for all fire departments across the state regardless of their experience modification? **Mr. Redden** answered yes it could be. **Senator Stegner** said if they have an existing workers compensation benefit today, what rate does it pay-off on versus this defined benefit? **Mr. Redden** stated right now it is a minimum of 45% of their current earnings and that is where we see the complaint from fire districts and departments. When you go to determine the 45% of their regular earnings if the individual has a permanent job with a business but it is hard to define if you are self-employed in rural Idaho. We look to the passage of this legislation as an incentive to those fire districts and departments in the rural areas of Idaho to be able to recruit and retain those volunteers. It is not only a benefit amount, but also a timing issue because it takes time for self-employed individuals to prove their income. On page 6, under *Section 72-409-2, Idaho Code*, which defines how a benefit is determined for Idaho citizens in Workers Compensation Law and it specifically states the 45% minimum rate.

Chairman Andreason said it has been his understanding that volunteer firemen who have this coverage have their premiums paid by the local unit of government that they represent. Is that true? **Mr. Redden** said actually there are two different premiums paid. If a volunteer fireman works as a permanent employee of a business then that business would pay a workers compensation premiums for that class code. The volunteer fire department also pays workers compensation premium for the class code. If a volunteer fireman gets hurt in the line of duty, the claims history will go against the volunteer fire department on the volunteer fireman's permanent job. **Senator Goedde** asked **Mr. Redden** to clarify his comment on specific premium paid for a volunteer fireman by the local volunteer fire department. **Mr. Redden** answered that the local volunteer fire department pays per volunteer fireman each year.

Senator Goedde said most class codes for worker compensation insurance are based on payroll so if a volunteer fireman is making \$40,000 per year working at his permanent employment the premium based on his salary, the payment would be fairly substantial. The department also pays Workers Compensation Insurance class codes on him as a head count in a local volunteer fire district there must be a dollar amount associated with that head count, what would it be? **Mr. Phil Gridley, Mountain Home Fire Chief**, answered he did not know the dollar amount but his department pays this class code per head. **Senator Goedde** asked **Mr. Redden** to clarify the rate difference between a volunteer fireman and a full time fireman? **Mr. Redden** replied he did not know the answer to that question. He knows it is a different class code. **Senator Goedde** said lets assume we have a paid fire department with no volunteers. The volunteer emergency responder and there is a rash of claims paid out for volunteer responders, would it affect the department that does not have volunteers? **Mr. Redden** said he had asked James Alcorn that same question and he answered that they are in a different class code and the claims that are paid out are paid by class code.

Senator Cameron said some years ago the courts ruled that workman's compensation had to pay benefits for a volunteer. **Mr. Redden** said his understanding is since those fire districts and departments pay in for that class code that they would receive an insurance benefit. **Senator Cameron** said the reason I recall this is there was a budgetary issue involving volunteers who were clearing trails and they got injured and the courts ruled that workman's compensation had to pay benefits and they had to come seek money to pay for those benefits. The State Insurance Fund ended up adjusting the premium to cover the cost of this action. **Senator Cameron** said it is his understanding that if a volunteer is injured on the job the courts have ruled in the past that the insurance company would have to pay for the medical claims. **Senator Cameron** said the other portion of Workman's Comprehension Insurance is the replacement of salary. If this bill passed, how would the workers compensation insurance company handle the salary issue for volunteer firemen. The bill addresses that minimum salary weekly wage that would be paid to a volunteer who is injured in the line of duty. Instead of having a 45% minimum based off their current earnings it would give them a greater choice being 67% of the weekly state income average or based on the permanent job salary, whichever is greater. **Senator Cameron** said how would a workers compensation insurance company underwrite a fire district? In order to know what risk they were potentially assuming they would have to know the salary of each of the volunteers at their permanent jobs. Under current code that information is not collected the State Insurance Fund only collects from the fire districts by a head count. If you are tying it to their individual and non-firefighting income, he would think that the insurance company would have two choices. They will ask for occupations and salaries of each of the volunteer firefighters or choose not to quote the business. **Mr. Redden** said he writes insurance in his permanent job and Provident Insurance Company writes the coverage on fire departments. It is a workers compensation plan on top of the state benefit. Provident Insurance writes this insurance nationwide

and the department just reports the number of volunteers in their department. It is based off national numbers and injury rates.

Chairman Andreason welcomed **Phil Gridley, Mountain Home Fire Chief**, to the Committee to speak on S1444.

Mr. Gridley said he wanted to be recognized for the record to urge the Committee to send this bill forward because it is needed in the state for fire protection. Workers compensation is being paid by each fire district and department so those districts and departments should have the benefit of seeking a claim in case of an accident.

MOTION:

Senator Broadsword moved to send H1444 with the recommendation that it be referred to the 14th Order for amendment. The motion was seconded by **Senator Davis**. The motion carried by **Voice Vote**.

Senator Goedde said the experience modification would apply across the board so if a fire department would have a series of claims on a volunteer firefighter they will pay more for their regular firefighters in every other class that they report on. It is still the responsibility of the local district to pick-up that additional benefit. We have only heard from individuals that want the additional benefit, but if we send it to the 14th Order, we should find out.

S1447

Relating to the Department of Administration & Group Insurance
Vice Chairman Coiner stated that S1447 deals with the health benefit for the state retirees over 65 years of age. The Director of Department of Administration shall form an advisory committee comprising members from all three branches of government, that includes as ex-officio members, Director of the State Department of Health and Welfare and the Director of the Department of Insurance. This bill requires the Department of Administration to promulgate rules determining eligibility for health insurance benefits. It also directs the Director of the Department of Administration to develop a plan that includes active employees and retirees and their dependents. This legislation changes the eligibility for access to and defines the state's contribution to any state-sponsored health insurance plan or plans for retirees and their dependents. Beginning July 1, 2008, each eligible retiree shall receive \$155 each month or \$1,860 per year toward their premiums for health insurance. Any retiree who is currently eligible and on the state insurance plan will remain so until they become eligible for Medicare. If a retiree is eligible but not on the state plan, they have until June 30, 2008, to notify the Department of Administration and accept coverage. Beginning on January 1, 2009, retired personnel health care coverage will not be available to retirees and their spouses if they are both eligible for Medicare. A spouse will be eligible for the monthly subsidy if the retiree becomes eligible for Medicare first and until the spouse also becomes eligible for Medicare. Persons with previous state employment intending to obtain coverage under the state-sponsored plan after retirement from another employer will no longer be able to do so. Finally, any employees or elected officials rehired, reelected, or reappointed on or after July 1, 2008, will be eligible for retiree coverage if they had at

least ten years of previously credited state service before June 30, 2008, accumulate an additional three years of credited state service, and are otherwise eligible.

For retirees 65 and over the state will negotiate supplemental plans such as the True Blue Plan in southern Idaho or the Flex- Blue Plan in northern Idaho. On January 1, 2009 the 65 and over retirees will have to make a decision of what supplemental plan that they want to accept. The Department of Insurance is planning an educational component to give guidance for the retirees to make informed decisions before they must select one of these supplemental plans. **Senator Werk** said the state negotiating of plans he takes is not in the legislation so they might or might not be available because they are not statutory. **Vice Chairman Coiner** said the state looked into putting a supplemental plan in place, with less than 4,000 retirees over 65, and one or two of these retirees with a catastrophic health issue would price the supplemental plan out of reach. These supplemental plans will be private plans that the state has been negotiating the prices to be able to present them through the state to the retirees. **Senator Werk** said these plans are not in the statute. They could exist or not exist and the \$155 per month is frozen for the retirees under 65.

Senator Bilyeu asked could you tell me the difference in these supplemental plans in dollars. **Vice Chairman Coiner** said these plans range in dollar value from \$95 to \$195 depending on what plan they sign-up for. Many of our retirees 65 and over have stayed with the state plan because they did not have a drug benefit before part D came. The supplementals now come with the part D which is the drug component. For not more than what they are paying now they can be on Medicare with a drug benefit which is comparable to what they have now. **Senator Broadsword** asked could you clarify on page 3, section e about individuals who had retired from state service and came back to work for the state and they wouldn't be eligible for insurance for three years? **Vice Chairman Coiner** said right now a person can leave state service after ten years and he is vested in the health benefits. He can go out into the work place and be gone from the state for 20 years and come back into state service and request that health benefit and get on the health benefit that would subsidized at \$155 for the retiree health benefit. **Senator Broadsword** said it states here on line 21, on page 3 that they would have to accumulate another 6,240 hours of credited state service to be eligible for coverage. **Vice Chairman Coiner** clarified that an employee works for the state say from age 25 to 35 and leaves the state employment and goes and works in the private sector. In the ten years plus a month of service he is vested and has the retiree health benefit. If he comes back into state service at 45, he can get reinvested in the health benefit if he works for the state three years or more and retires from state service, he will be eligible.

Mike Gwartney, Director of the Department of Administration, said the objective of this legislation is two fold: 1) to get the unfunded liability in the state down to a reasonable number but more importantly 2) it provides some better opportunities for the retirees of the state. At

present the state retirees over 65 on the state plan it is costing them \$190. If the state doesn't do anything those rates have to go up about 30% because of cost increases for insurance products. The cost to the retiree with the 30% added will take the state plan to \$240 for the retiree and the spouse which would equal \$500. The state went into the marketplace and looked at supplemental plans and what could be used for the state's buying power to provide coverage to these retirees. They found that they could acquire a True Blue Plan with the following: 1) no preexisting condition cost 2) no deductible (avoid a \$350 deductible that they have in their present plan after they go through Medicare) 3) dental and vision coverage. This is a better plan and the state can provide this plan for around \$100 in Ada County versus the \$240 that they would be required to pay after the 30% increase. Drug coverage is comparable up to the \$4,000 level and better after that. Most of our people are in the PPO plan and we have superior drug coverage in the plan we have negotiated for those retirees that have big drug bills. Example: An individual making \$800 a month payments to drugs, not unusual if you are above 65 years of age, under the plan these retirees would have an out of pocket payment today out of our plan of \$6,000 that drops to \$4,000 with the supplemental plan. The employees under 65 that retire between 55 and 65 over the last three years the rates have been frozen. These individuals have been paying at a level that this coverage would be supplemented back when it was put into place, the supplement was \$16 that has grown to a cost increase of over \$140. We are estimating that it will be around \$155 to \$170 if we carry it into the future. We picked \$155 frozen for the supplement, cost increases in the future would be the responsibility of the retiree. In summary 55 to 65 retirees have no change other than we have put \$155 supplement on the books. They pay \$393 today. They will pay around \$515 with the 30% increase after the supplement. The state gets rid of some liability, the above 65 retirees have a better plan even if they are in northern Idaho because \$195 is better than \$249, for the 55 to 65 we have a supplement that was put in place for \$155.

Chairman Andreason said he has received letters concerning specific issues from employees who had worked for the state until age 65. Then they retired and they got different jobs with the state and went back to work for the state. When they left the state and retired some of them had as much as 2,500 hours of sick pay which they got 600 hours credit for payment of future insurance premiums. They are asking me what does this new plan do to them when they retire a second time with these unused premium dollars that they earned by not using their sick leave. **Mr. Gwartney** said any unused sick leave time they might have acquired they have up to 600 hours and it may be applied to their insurance premiums.

Senator Werk said at the beginning of the bill it states that there will be established an advisory committee. In the past retirees have expressed that employees current and retired have not been allowed representation to help form legislation that would effect their benefits. Again we are creating an advisory committee with departments and may include employee representatives. Why isn't there employee representation in

that committee to insure that the current and retired employees are vested with the power to help shape change. **Mr. Gwartney** said he thinks the language in the bill allows that committee to bring people in to speak to the issues. Some people in this room, without the benefit of the legislation talked to representatives of different employee segments and they had input into the formulation of this bill. **Senator Werk** said the issue he has is without wording in the statute there is no guarantee that any employee input on that committee would be continued. **Mr. Gwartney** said let me tell you the committees that oversee my work: Change in Employment Compensation Committee, Human Resource Committee, and now I have an advisory committee. Somehow he does not think he or his successor will drift off the path. **Senator Stegner** said he would like to point out that the old language of the bill, which was the product of an interim committee that met and set salary policy, that the director of the department shall have the authority to create that committee and they have taken that out and established that they shall have that committee and included language to be specific. An advisory committee may include employee representatives that is not new language, but language that has been strengthened. That is what the interim committee said it was in the past. He thinks it is a significant statement in terms of having employee representation because that comes from the executive, the legislative and the judicial branches which are all employee representatives. **Senator Werk** asked would you clarify on page 3, subsection 4, who are we not vesting in this language? **Mr. Gwartney** said the state will have the option to change coverages in the future.

Jim Keating, Retired Fish and Game Employee, worked for the state for 30 years and he believes he gave the state good loyal service. State employees did not get paid as much as they liked but the state always gave good benefits. Now they are being told that the state will be cutting off the medical benefits for those over 65 years of age. There are approximately 3,300 retirees, 2,500 are over age 65. In the bill it says up until age 65 the state will provide the \$155 a month and now if you are over 65 you get cut off the state insurance. This rationale is that they are going to Medicare, why should we support them? One of the biggest reasons not to cut us out of the state plan is the cost of drugs. After a major operation you could end up with a bill after Medicare pays their 80% for \$20,000. What the state Blue Cross Plan provides as a supplemental will help you pay those fees and also the co-pay for drugs. Those who worked for the state for years worked under the assumption that their benefits included a lower salary but a decent medical plan that carried on into the retirement years. The fiscal impact of your actions for retirees over the age of 65 will be \$1,860 per year. **Chairman Andreason** reminded **Mr. Keating** that **Mr. Gwartney** said that the retirees over the age of 65 will be getting a better medical plan than they have now. **Mr. Keating** said he pays \$190 now and he guesses the state has been paying \$155 as part of his benefit that he thinks he earned while he was working for the state. They should form a committee and don't make these cuts until the plans have been looked over.

Don Brennan, Lobbyist, Idaho Public Employees Association, said he is also a retiree and that January 1, 2009 will be a dark day for retired state employees if the proposed bill goes into effect. This will be a day that retirees over 65 no longer have supplemental medical insurance. Many state employees took their jobs on the promise of these medical benefits. He has a deep respect for state employees of which you can be proud. He was an Executive Director of the Idaho Council on Vocational Education, a State Legislator from District 35 and a junior high vice principal. He is very familiar with the legislative process. Please try to see through your budget constraints to the reality of the promise made to state workers long ago. He said his retirement will be greatly affected by the decision you make on this bill today. He takes 15 medications per day for medical conditions which are provided to him through his supplemental policy that the state offers. For years state employees have lived with promises. When these promises were unmet they relied on a promise of a comfortable modest retirement with medical benefits. Again, please try to look beyond the budget at who will be affected by this bill. These are people who labored honestly for the good of the state. I ask you to vote no on this bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Jay Webb, Past Majority Leader of the House, stated he believes the Legislature is trying to gather up a bunch of money to build roads or what have you. As long as he can remember every time lack of salary increases came up, they would assure Mr. state employee not to worry about your pay you, have those great benefits in your retirement years, so we will put your pay raise off until next year. Bottom line the state will pick \$442 million and reduces the liability to approximately \$136 million and that is substantial savings you have to take into effect the state setting aside 85% of the payments that they are now making on behalf of state retirees in particular. You don't do this dramatic of an act in the last two weeks of a session. Shouldn't you take a long and deliberate look at this from every vantage point before you pass this legislation?

Ron Moore, Retired Superintendent of the Idaho State Police, said he is not in favor of this legislation and contrary to what **Mr. Gwartney** has said, based on his background in law enforcement, he reads the may, shalls and wills very closely and there are several items in the bill that are not outlined in language that would require someone in the future to follow through on supplemental plans and rates. Although we have Medicare coverage, we need a supplemental plan many retirees might be uninsurable and what effect will that have on the liability of Medicaid. Being cut off from insurance benefits would be disastrous. They worked at lower salaries and the Legislature always reminded them that their pay is not as much as it should be but you have the benefits. I find nothing in the statute that addresses individuals will be able to retain the unused sick leave hours that transfer over for medical payment. Page 2, paragraph b, line 51 "beginning January 1, 2009 retired personnel health care service coverage shall not be available to any

retired personnel or who is or becomes eligible for Medicare". Once an employee is 65, if they happen to be an employee that works to age 66 there is nothing in this bill that says that will carry forward.

Mr. Moore read Senator Brad Little's letter to the audience. "Dear Ronald: Thank you for your email of January 21,2008. Governor Otter's proposal does not affect current retirees, only new retirees. There is currently \$450 million in unfunded liability in our State, and this is a problem that needs to be addressed. However, the Legislature and Governor Otter agree that it not be at the expense of our retirees. Again, I appreciate your input. Yours very truly, Brad Little." I urge this Committee to vote no on this legislation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Dale Tankersley, Retired Idaho Personnel Commission, said my last 25 years of service to the state was human resource management and he wrote many of the personnel policies concerning medical coverage benefits. He had to speak with employees about lower salaries but the state benefits were good. There was a time when we told employees if you get a dollars worth of benefits you get the full dollar value, if you get a dollar in salary you pay income taxes. He believes the Legislature is getting the cart before the horse. We have a piece of legislation to establish a committee to look at this issue but yet you want to ram this bill through and put it in place before the committee sits down and talks about it. **Mr. Tankersley** is asking the Committee to look at what it is putting into place structurally and then is that structure getting a chance to work or are we just ramming this bill through and hope that everyone does what they say they are going to do. We are at your mercy and all he can ask you to do is look within yourself and do the right thing for the right reasons for your current employees, past employees and future employees. As a citizen of Idaho, born and raised here, **Mr. Tankersley** is concerned about our state government because it is no better than the employees working for the state delivering the service.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Dona Van Trease gave a hand-out to the Committee of her testimony.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

Chairman Andreason adjourned the meeting at 3:10 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 6, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Werk and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator Broadsword

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order at 1:30 p.m.

S 1447 Relating to the Department of Administration & Group Insurance

Vice Chairman Coiner said that following the March 4, 2008 Senate Commerce and Human Resources Committee meeting, it was apparent to him that this bill needed more language. He presented a proposed amendment to the bill to Committee members and recommended that the bill and amendment be passed to the 14th Order. The amendment states "the Director shall negotiate and have available a Medicare Supplemental Plan(s) for retired personnel and shall assist retired personnel in transitioning to the Medicare Supplemental Plan(s)." This makes sure we aren't leaving retired personnel without help. He said the coverage they would have is superior to what they have now, for less money. He asked Jerry Dworak from Blue Cross to go over the options and compare those to the current plans and costs and then answer questions.

Jerry Dworak, Senior Vice President and Chief Marketing Officer with Blue Cross, introduced Jeanie Phillips to explain the Medicare Advantage options.

Jeanie Phillips, Executive Director, Medicare Advantage with Blue Cross, explained the comparison of the current retiree plans to two of Blue Cross' Medicare Advantage plans - True Blue (available in 24 counties) and Flexi Blue (available state wide). These are Medicare Advantage plans and are not Medicare supplement plans; they replace Medicare because Blue Cross contracts with Medicare to provide all of the Medicare benefits plus additional benefits on Medicare's behalf. She said this plan also provides some dental, vision and hearing aide benefits that aren't traditionally covered by Medicare. She explained premiums for

the various parts of the State with each plan.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1 and 2].

Vice Chairman Coiner asked about out of pocket limits for the True Blue plan. **Ms. Phillips** said there is no out of pocket limit with the True Blue plan because the cost sharing is minimal. Flexi Blue has a \$5000 maximum per calendar year which was omitted from the comparison sheet.

Senator Werk referenced the Advantage plan, and said he is aware of difficulty in Congress where there is concern that they are paying a larger premium to Blue Cross for Medicare services than they would be otherwise, and there is a thought of eliminating that benefit. Would that translate down into cost increases for the Blue Cross plan? **Ms. Phillips** said that is correct. **Senator Werk** asked what is the percentage of the amount the federal government may consider overpayment that is coming to Medicare services? **Ms. Phillips** stated that it has been reported by some that the overpayment is 10% - 12%. She said there is a dispute about whether or not there really is an overpayment. **Senator Werk** asked if the Blue Cross plan has price pressures on it that will cause it to rise with the general cost of healthcare? **Ms. Phillips** said that is correct. The way they are funded is that Medicare pays them a flat amount per member per month when Blue Cross contracts with them, based on a risk for each individual. So, to the extent that they reduce that funding, the price pressures are there.

Senator Bilyeu asked about the first page under "Current Medicare Advantage Rates Subject to change 01/01/2009" and then the "Proposed Medicare Advantage Plans ..." and asked Ms. Phillips to clarify this. **Ms. Phillips** said the current rates are the rates Blue Cross offers right now to individuals in the market place. The proposed rates are something that Blue Cross put together for the Idaho State retirees so they would have one unique benefit plan. Even though it is Flexi Blue and True Blue, the benefit plans would be the same, so they increased the Flexi Blue benefits to bring them up to the True Blue benefit level because they are not currently the same as they offer them to individuals in the market place. They were asked to provide what it would look like if everyone had the same benefit throughout the State. To add those extra benefits, there was some additional cost. Part of the reason there are two plans is because Blue Cross is only approved by Medicare to offer True Blue in 24 counties and Flexi Blue in all counties within Idaho.

Jim Keating, retiree, began to question specifics of the proposed plans.

Senator Davis said Mr. Keating has some important questions, but in the ten years Senator Davis has been in the legislature, this is extremely unusual. He said he knows there are questions, but this kind of appropriate discussion must occur in some open houses or whatever needs to be done to answer questions. It can't be done today in this Committee meeting. If the Committee becomes secondary to the questions of the audience, the Committee will never get to the bill. He

stated he doesn't want to lose track of the agenda they have before them.

Chairman Andreason asked how the coverage for State employees who have retired is different than what Blue Cross is offering to anyone else?

Ms. Phillips said it isn't different than what they're offering to individuals in the market place. **Mr. Dworak** said the downside of Medicare Advantage is that it is only available in the 24 counties. What they are offering to the State employees that is different from the rest of the population is to increase the benefits on the Flexi Blue, benefits available in the other counties, to match what is available to people in the 24 counties. He said they have 18,000 members over 65 that are currently in one of the Medicare Advantages. This is not a new thing, it is very popular and is the fastest growing market segment that Blue Cross has.

Senator Werk said his impression is that the State procurement system doesn't let them go out to have a competitive bid process. He said he doesn't know where this fits in with that because he doesn't believe the State can step out and do this. **Senator Cameron** said these plans are essentially individual plans, so the individual would have the option of choosing one of these plans, or they could go out and shop on their own to purchase another product. This is not a State purchased product.

Senator Werk asked if it is a negotiated product? **Senator Cameron** said that is right. He commended Blue Cross for being in the Committee today to offer a competitive product simply because they were asked to come.

Senator Stegner asked about the limitation of the True Blue to the 24 counties. He asked why it is only offered in some counties and what is the plan for the future in terms of being able to offer something close to those rates State wide? **Ms. Phillips** said the reason this is only in 24 counties is because they are regulated by the Centers for Medicare and Medicaid Services (CMS). They have to file for approval from them for each county they are in. For True Blue, because it is an HMO product, Blue Cross has to demonstrate that they have contracts with providers sufficient to guarantee what they consider adequate access for all the members. Blue Cross has been able to do that in the 24 counties. The remaining 20 counties are the more rural, sparsely populated counties where Blue Cross has not been able to generate an HMO network. As they are able to do that they will file with CMS for expansion. **Senator Stegner** asked if it is Blue Cross' intention to work toward that end, realizing that in some places it may not work out, but is it their marketing plan at the moment to try to take this State wide? **Ms. Phillips** said that is correct. In 2007 they were able to add 11 counties. **Senator Stegner** asked Ms. Phillips to explain how this drug benefit compares to what they currently have with the State plan? **Ms. Phillips** said it is a Medicare Part D benefit, so it meets that criteria. It has a coverage gap, commonly referred to as the doughnut hole. Blue Cross provides generic coverage in the doughnut hole for a \$6 co-pay, but brand name coverage in the doughnut hole is not included in their plans. That is different than what the State plan has.

Senator Stegner asked what the cost would be for a high drug user out of pocket for that doughnut hole? **Ms. Phillips** said she would have to consult her actuaries to determine that. **Chairman Andreason** said in some cases he is sure it is \$1000's per year.

Senator Goedde said Ms. Phillips stated that True Blue is not available in sparsely populated counties. Kootenai County is the fourth most populated county in the State. He asked if it was available there? **Ms. Phillips** said it is.

Senator Cameron asked if Flexi Blue is available in the counties where True Blue is not available? **Ms. Phillips** said that is correct. **Senator Cameron** asked if it would help Blue Cross to obtain provider contracts if there was a larger segment of the population actually signed up on the Flexi Blue product who would be willing to go to the Medicare Advantage plan? **Ms. Phillips** said it does.

Senator Stegner asked on the Flexi Blue program that is available across the State, is it a supplement D based drug program also? **Ms. Phillips** said it is another CMS requirement for Medicare Advantage plans to have a Part D benefit incorporated in them. **Senator Stegner** asked if it has the same doughnut hole? **Ms. Phillips** said it does have the doughnut hole. The current plan that is offered to individuals does not have the generic coverage in the doughnut hole, the proposed plan with the higher premium has generic coverage in the doughnut hole.

Chairman Andreason asked how much will this plan cost the State of Idaho? **Mr. Dworak** said zero. This is an individual cost product.

Senator Bilyeu said it says on page 2 that the State will pay \$155 per eligible retired personnel per month. She asked if the State is paying something now, and if so, how much do they pay? **Director Gwartney** said right now they are paying a little over \$200 per month. It was \$140 as of last year, their projection was \$200 this year, so they leveled it off at \$155. **Senator Bilyeu** asked if there is any provision that the proposed \$155 per employee will change? **Director Gwartney** said no, their proposal is to freeze the amount at \$155. **Senator Bilyeu** said if the coverage increases, then the retired employee will be the one that picks up the entire increase. Is that correct? **Director Gwartney** said if the coverage cost increases all of the costs will be the responsibility of the retiree.

Senator Stegner asked about page 3 of the comparison. He said under the State current plan for a doctor visit the member pays 20% after deductible; under True Blue the member pays \$10 for primary care visit and \$20 for a specialist visit and there is no deductible. He asked if that is correct? **Ms. Phillips** said that is correct. **Senator Stegner** asked if it is the same for a chiropractor, podiatrist and a better deal for mental health? **Ms. Phillips** said that is correct. **Senator Stegner** went through the rest of the comparison and then asked about dental benefits. **Ms. Phillips** said dental coverage is a \$1000 benefit which is not covered by Medicare, but it is covered in the Blue Cross plan, and there is not cost sharing. **Senator Stegner** referred to page 6, prescription drugs - both the State of Idaho current plan and the State of Idaho PPO plan have \$4000 maximum limits for drug benefits, which is their out of pocket total cost if they happen to be a high prescription drug user and maxed out their benefit. They could be subject to as much as \$4000 annually. This is how much the State has at risk. He asked if there is any maximum like that in

the Blue Cross plans? **Ms. Phillips** said no, it is unlimited after the doughnut hole is met.

Senator Werk said he has found that coverage can be applied very differently in terms of what is covered under what conditions.

Senator Bilyeu said she has had communication from people who have accumulated sick leave they were planning to use to help pay their Medicare. **Director Gwartney** said people who accumulate sick leave up to a maximum of 600 hours and are between 55 and 65 years of age, may use that to pay the premiums on their coverage. If they are above 65 years of age, the present posture is they may use the 600 hours times the level of pay to purchase the Medicare Advantage the same way they do today. In fact, if someone chooses not to go with Blue Cross Medicare Advantage plan, and wants to try another one, that same benefit is provided for Blue Shield and American Association of Retired Persons (AARP) coverage. There is no change from today. **Senator Bilyeu** asked if it is now that they can only use 600 hours? **Director Gwartney** said it is limited to 600 hours. That is in the sick leave part of the statute. **Senator Bilyeu** said she received a letter that indicated a person thought they would have enough sick leave accumulated to last them three years on their premiums; so, 600 hours wouldn't do that, would it? **Director Gwartney** said it would last quite awhile. There is no change on this policy.

Senator Cameron asked for an explanation of the network Flexi Blue plan and how it differs from the Medicare Advantage plan and the True Blue plan? He said as he understands it, even though a person has available True Blue, they could still choose the Enhanced Flexi Blue plan. He asked if this is correct? **Ms. Phillips** said they could only choose that if it was an option for them under the State plan. The Enhanced Flexi Blue plan is something that was put together at the State's request. It could not be bought on the individual market. **Mr. Dworak** said they can choose the Flexi Blue, even if they're in a True Blue area. If their doctor is not in the True Blue network they can definitely choose the Flexi Blue. **Ms. Phillips** said True Blue has a very robust network of providers in the 24 counties. Flexi Blue as a private fee for service plan does not require them to have contracts with providers. Under the Medicare rules a provider can say they will agree or not agree to see a patient. It is their choice. When they do agree, they agree to accept the plan's terms and conditions of payment. Blue Cross has contracted with providers across the State. They contract with them once for all their products, so while Medicare doesn't require them to have a contract for their private fee for service plan, the providers who are already contracted on their other products are bound by that contract and have agreed to see all of Blue Cross' private fee for service plan members. **Mr. Dworak** said that is 100% of the hospitals and between 92% and 95% of physicians.

Senator Cameron asked if a retiree wanted to see whether their physician was in the True Blue network or in the Flexi Blue network, how is the best way for them to find that out? **Ms. Phillips** said it is on the Blue Cross of Idaho website in the provider directory or they could call Blue Cross' customer service office.

Senator Cameron said Senator Werk made a comment that maybe the benefits weren't exactly the same. He asked Ms. Phillips to identify any significant exclusions from the State's plan and the True Blue or Flexi Blue products. **Ms. Phillips** said the True Blue and Flexi Blue products cover everything that Medicare covers. The additional benefits are provided up to a dollar limit - in the dental and vision, etc. So, if Medicare covers it, the Blue Cross plans cover it - they are required to. **Senator Cameron** said if, for example, someone was going to have open heart surgery. Under the traditional plan it would be covered based on the definitions of the product towards the deductible, paid at 20% after the deductible, versus, covered essentially the same only processed as if through Medicare, with the co-payment if there was a physician co-payment. He asked if that is correct? **Ms. Phillips** said that is correct. It would be processed through Blue Cross of Idaho, and on True Blue open heart surgery there would be no cost sharing for the hospital or the physician charges while the individual was an inpatient.

Senator Stegner asked Alan Winkle if Public Employees Retirement System Idaho (PERSI) keeps track of the conversion of unused sick leave for retiree medical benefits? **Alan Winkle**, Executive Director of PERSI, said that is correct; they administer that program. **Senator Stegner** asked if anything needs to be added in this statute that would continue PERSI's authority to make that conversion for unused sick leave? He said he is under the assumption that it doesn't need to be done, but he would like Mr. Winkle's opinion and whether he sees any problem that would hinder PERSI in any way from continuing to administer that portion of Idaho code that allows for the conversion of unused sick leave for retiree's medical benefit? **Mr. Winkle** said their law says they may pay unused sick leave money for medical plans for the retirees maintained by the State. So to the extent that plan continues to be maintained by the State and the member can access it, then PERSI is able to pay sick leave. To the extent they aren't eligible anymore or it is not maintained by the State, then PERSI isn't able to do that. So if they still have a contractual relationship with these different providers they are able to pay premiums out of sick leave. He said he hasn't gone through the legislation in as much detail to know if there is anything that would pull it out of that maintenance for particular people.

Senator Davis said he believes there is a strong desire on the Committee to take the bill to the amending order and pick up some of the concerns that are being expressed. He asked Mr. Winkle to take the responsibility to make sure the ball is not dropped, working with the Director to make sure the language is in place adequately so that, as we go forward with this legislation, individuals who are still entitled to that benefit can continue that benefit and that we have the appropriate standard in place so that someone doesn't say we didn't provide appropriate enough duty on the States part for us to further administer the plan? **Director Winkle** said he is willing to participate.

Senator Werk said he thinks he is hearing two different things. Mr. Winkle is saying that the State has to maintain the plan and then the Committee is saying that this isn't a plan that the State gives you, it is a plan you buy into. He said unless there is a way to bridge those things they seem

mutually exclusive in terms of the sick leave issue. He asked Mr. Winkle about his definition of maintaining the plan as opposed to what has been stated about the plan being offered individually to retirees if they decide they want to take it up or then go elsewhere. **Director Winkle** said an example of how they do it today may help. There are several plans offered through the Department of Insurance that are contractual relationships with, for instance AARP. They have a contractual relationship, a central billing, PERSI would make a payroll deduction from sick leave or payroll - however it is -transmit that money to group insurance, and group insurance transmits that money on a central billing to AARP. In PERSI's way of looking at it, that satisfies the definition of maintain, but there is no real break in a premium. It does provide that contractual relationship and central billing. That's how it works today.

Director Gwartney said they have contractual relationships in place today with Blue Cross, Blue Shield and AARP so that maintains the relationship that Director Winkle was talking about. If it turns out the Department of Administration should have contracts with other people they will be happy to do that. At this point in time he is not willing to sit down with 100 folks and make contracts. They have an array of products, they will continue to have an array of products, they will put the contracts in place that allow PERSI to use the 600 hours for premium payments.

Chairman Andreason asked of Blue Cross if they are in agreement that what they are offering would allow the State to be in control, which is the requirement that was stated by our Director? **Mr. Dworak** asked in control in terms of what? These are individual policies. **Chairman Andreason** said the Director said that as long as the State is in control. Does the Blue Cross plan maintain the State being under control? **Director Winkle** said PERSI's requirements are that they have a contractual relationship that is maintained by the State. It is a contract to simply provide that benefit. It could be the same price that they get on the market, it is just a convenience for central billing and payroll deduction. **Mr. Dworak** said they would definitely sign that contract. **Director Gwartney** said they are in control because they can terminate the contract at any time, and that puts them in control.

Senator Bilyeu said it is her understanding that retired State employees could take advantage of True Blue or Flexi Blue. If that is true, why do we need the legislation? If it is so great she would think the retired State employees would go ahead and sign up for this. **Director Gwartney** said right now they have an unfunded liability on the books of \$442 million. He mentioned that there are some retirees who have opted out of the State plan and are taking other supplemental type plans. By taking off the voluntary basis they are able to reduce that liability significantly. Two things that reduce the liability are having people go to Medicare and providing a supplement or advantage plan that they pay for by statute, and freezing the \$155 supplement. Those two things will bring that liability down to about \$125 million. This cannot be done on a volunteer basis.

Senator Werk said if there is a liability there, it either disappears somehow or it shifts. What is happening to the liability? **Director Gwartney** said when someone retires, the Department makes an

estimate of their lifetime using mortality tables and an estimate of how much medical costs will increase over their remaining lifetime. They then put together an actuary and this is a liability that is set aside for each person. The liability on the risk of the increasing cost shift to the employee - that is where it shifts to in the future. On the example of the \$155, the risk of the increase transfers to the employee. **Senator Werk** said he is a little bit confused because the information the Committee has received from the Director is that those costs will continue to go up for retirees under the current plan. He said he is trying to reconcile the frozen \$155 versus, if we stay with the same plan, the payments go up and up. Yet the Director is saying that somehow the liability dissipates on the frozen \$155. He asked how do those things fit together? **Director Gwartney** said the supplement for those people between 55 and 65 several years ago was \$16. As a result of the actions of this body, premiums were frozen for the last three years. At the same time, costs increased by 10% to 11% per year for active employees and over 20% per year for retirees. That was picked up by reserves, or the State ended up paying it. That is where the supplement came from. If, in fact, there isn't legislation that stops that, we have to assume that will continue; there is no other assumption. Therefore, the only way we can limit liability is to freeze it at the \$155. On the other side, for the people above 65, if Medicare picks that up and pays for the supplement, we freeze the liability.

Senator Coiner asked Mr. Dworak or Ms. Phillips to make a comparison for the premiums for the Blue Cross Medicare products and how they have escalated over the last ten years, as compared to how the premiums from other products have escalated over the last ten years? **Ms. Phillips** said the Medicare Advantage products were introduced with True Blue in 1997 so they are just ten years old. The initial premium for that was \$35. It did not include all the benefits it has now, so in 2008 the premium is \$95. That premium includes Part D coverage, which didn't start until 2006, it includes the dental coverage that was added in about 2005, and vision. So it has gone from \$35 to \$95. In 2007, the premium for True Blue was \$93. **Senator Coiner** asked for a comparison of regular healthcare product, such as the cost of the State plan, how much has that gone up? **Mr. Dworak** said he doesn't have an exact comparison but the general trend has been somewhere between 12% to 13%, and the trend on this particular program has been 5% because Medicare picks up a big chunk of this. **Senator Coiner** said what he is trying to point out is that the increase in cost of the supplementals is much flatter than the State regular plan has been and will probably be in the future.

Senator Stegner said that defies normal logic because we all know that medical and insurance costs have risen dramatically. The only explanation is that Medicare and the Federal government are picking up a huge portion of those annual increases in the costs. He asked if that is correct, isn't that why you've been able to keep prices on supplementals relatively flat? **Ms. Phillips** said there is an increase in the amount they get from Medicare to provide Medicare benefits that is typically three to four percent per year. **Senator Stegner** said so, in terms of cost shifting, this actually results in some of the State's unfunded liability. The fact is we are shifting a significant portion of that to the Federal government

through consideration of this plan.

Senator Werk said Ms. Phillips had mentioned a Part D benefit and he said he has heard of fierce competition for the Part D benefits and that this competition has kept prices on the Part D portion very low to bring people in - almost like teaser rates. He asked if Blue Cross has engaged in that and whether or not, when the dust settles on Part D, there will be significant price pressures on the Part D portion of the plan? **Ms. Phillips** said it has actually been the reverse. When Part D was first introduced in 2006, it was an unknown and there was a bidding process with Medicare. Everyone bid in the neighborhood of \$30 per Part D benefit per member per month. What has happened is that it has decreased every year in 2006 and 2007 because of competitive pressures. **Mr. Dworak** said Blue Cross is in a different situation than most carriers because Blue Cross does not offer a Part D stand alone. The only Part D they have is with the Medicare Advantage program. Where some carriers were having a Medicare Part D as kind of a loss leader to get the Medicare Advantage, Blue Cross never had that.

Chairman Andreason asked if the State goes with this plan, how much will it cost the State? **Director Gwartney** said the supplement plan would cost the State nothing. **Chairman Andreason** asked what costs would that leave the State with? **Director Gwartney** said the costs would be \$155 supplement for people ages 55 to 65, and that would be the retirement costs. There are about 800 people today that are in that age group, so it would be between \$150,000 and \$200,000 per year. **Chairman Andreason** asked what is it costing the State for our health insurance plan now? **Director Gwartney** said the total healthcare costs are around \$175 million. The savings to the State with the proposed plan are about \$8 million. **Senator Stegner** said the \$155 subsidy for retirees 55 to 65 is per month. **Director Gwartney** said that is true - it is \$1800 per year.

Senator Werk asked if a retiree who is over 65 but has a spouse who is under 65, would it be \$155 to retain the benefit for the spouse? **Director Gwartney** said that is correct. **Senator Werk** said if the retiree is over 65 and has a wife and young children, would there be no coverage for young children of retirees? **Director Gwartney** said the benefit is there but there would be only one \$155 supplement. The spouse will be in the plan they are in today. **Senator Werk** said if we compare the cost for that spouse and children today with the cost for that spouse and children after this passes, how does it work? **Director Gwartney** said it works exactly as it does today. The supplement last year was \$140. In this proposed plan it will be \$155. Above \$155, the spouse or family pays the rest of the cost of the plan.

Senator Werk asked about a section in the bill on page 2 (2) that strikes out some language and then adds it back in part 4, but the language changes. He asked what the change in language means legally, why is it moved and what impact does that have on status of that language? **Senator Coiner** said he would have to ask Mike Nugent in Legislative Services because he drafted that. He said he will search that out. **Senator Werk** asked the question of Director Gwartney. **Director Gwartney** said

he reads both sections the same way. It is clarified in the new language. He reads them to say that he is directed to negotiate contracts which cover both retired personnel employees and dependents. He said he believes the sections give him the same duties, but someone thought the second line clarified it. **Senator Werk** said the last portion - page 3, lines 23 - 26, say "...not create any vested right or benefit for any individual in group coverage." Is this new? **Director Gwartney** said this goes to the same question talked about previously, where this Legislature cannot commit a future Legislature. A future Legislature could, if they so desire, cancel a policy or policies. This portion just clarifies that. **Senator Werk** said he understands that legislatures can't obligate legislatures, but he thought this statute had to do with Director Gwartney's power in terms of deciding or not deciding what coverage is going to happen. **Director Gwartney** said this is language that was already in the bill, but just moved.

Senator Bilyeu asked about the \$442 million unfunded liability, is that because of the \$200 per month that the State is paying to the retirees, and if so, why is that? Is it because we didn't think we would have that many retirees or because they are living longer? **Director Gwartney** said it is because over a period of years we have not kept the rates up with the costs and then projected costs into the future. No one could envision healthcare costs going up at double digits every year. That is a new phenomena. Those rates had to be pushed into the future. For a lot of good reasons this body didn't raise rates for employees for three years while costs went up. That is a liability. If that continues in the future we will have to fund for that liability. The two factors are that we are behind in rates relative to cost, and the more important thing, healthcare costs are going up at a rate which we did not anticipate five or ten years ago.

Senator Cameron asked the Director to talk about Governmental Accounting Standards Board (GASB) and the effect of GASB on the new requirement to track. In the past there was no requirement to track our unfunded liability. Now there is. He asked the Director to explain that and to explain the effect on the State and on the bond rating. **Director Gwartney** said a few years ago that was a number that was hazy. There have been requirements now that we divulge that number, everyone, private and public, has to do that. When we go to the market to borrow money, like we have for the Capitol, the bond rates are depending upon the liabilities the State has. Today we're okay, but we're moving to a point where it will concern the financial world. If we do nothing we'll be at \$800 million in less than ten years. At that point the cost to fund that is almost \$80 million per year. If we funded the unfunded liability we have today it is \$31 million, so technically, we could be coming to Senator Cameron's committee and asking for \$31 million to get this off the books. But it has a long term effect on the financial viability of the State.

Senator Bilyeu asked is that liability all because of retirees? She said she feels like we're trying to fund that, or make that whole, on the backs of our retired employees. **Senator Cameron** said the bulk share is because of the retiree program - it is an obligation that we are expected to fund and pay for. That is the nature of having a retiree program. If we don't, the only other choices are to fund it with general fund dollars, or we

shift the cost and everyone pays more. **Senator Coiner** said when they first started looking at the unfunded liability and started to try to figure out how to deal with it, they found that by doing what is proposed in this legislation they weren't hurting the retirees 65 and over, but were helping them. All of us have been paying into the Medicare system through work. We have paid for that benefit. What has happened with many of our retirees is they have stayed on the health program because, before Part D, there was a necessity to stay on it for the drug part of it. Now that we have Part D in these products explained to us today, the retirees 65 and older will have better coverage, there will be less out of pocket for them, it will cost them less for the premium they would pay and there will be a flatter increase in the future than with the State plan. This is a win-win. The State is removed from the liability and the State retirees 65 and over will have better healthcare coverage for less money out of their pocket.

Dona Van Trease, Executive Director of Idaho Public Employees Association (IPEA), said she is against S 1447. One big concern is unused sick leave. She stated she called a number of the IPEA Board and members to obtain their input. They told her they want this bill held for further study, they want employees and retirees to be able to provide input, and they want to see the figures and the proposed recommendations for the Department of Administration regarding Medicare subsidies. She requested that the Committee hold this bill as a message of good faith to give the issue more time and consideration.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 2].

Ron Moore, retiree, said the language in this bill does not cover children. He requested the Committee to insert language that would include "spouse and/or dependent children" in the bill. He said he currently pays \$36 every 90 days for Lipitor, and under the Flexi Plan he would be paying \$120; under the network program he would be paying \$105. That is a significant increase. Also, coverages for hospitalization increase dramatically for out of network hospitals. He gave the Committees a copy of Senator Little's letter to him to show that even he is not sure of what is going on here. Mr. Moore said this just needs more study and more time.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 3].

Alan Hausrath, Chairman of the Committee to Preserve Affordable Healthcare for Retired Idaho State Employees' Families, stated this organization has two main goals: to see that health insurance rates remain stable and reasonable for retirees and to ensure that younger spouses continue to have access to the retiree group even after the retired State employee reaches age 65. He said they urge that the bill contain explicit language stating that the two groups are to be rated jointly. They also urge that the statute language be made absolutely clear to allow retirees to use unused sick leave pay for approved Medicare supplement policies.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 4].

Senator Werk asked whether Mr. Hausrath is for or against the bill? **Mr. Hausrath** said he is suggesting improvements because he feels this bill is likely to pass.

ADJOURNMENT **Chairman Andreason** said the meeting has run out of time. He adjourned the meeting at 3:04 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 11, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Andreason** called the meeting to order.

S 1399aa Relating to Property

June Sparks, Arts West School Student Advisor, thanked the Committee for their help in defining the Home Owners Association Meeting Law. She said SB 1399aa is needed and said she will work with the Idaho Association of Realtors to come up with a beneficial bill. They will have a series of meetings this summer to make sure this happens.

Chairman Andreason explained that the memo from John Eaton, Government Affairs Director for the Idaho Association of Realtors, states that the Idaho Association of Realtors agrees to take the lead in forming a working group of interested parties to explore the issues related to this bill over the coming summer with the goal of reaching a compromise for the 2009 Legislative Session. This memo also asks that the Committee hold S 1399aa for the interim.

MOTION **Senator Goedde** moved to hold S 1399aa in Committee. The motion was seconded by **Senator Stegner**. The motion carried by **voice vote**.

Senator Broadsword asked if the students were young enough that they won't graduate before this is accomplished? **Chairman Andreason** said some will graduate, but the Committee has a commitment from those that won't graduate to come back and bring friends and parents.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1 and 2].

H 411 Relating to Annuities

Bill Deal, Director, Department of Insurance, explained that this bill amends HB 117 enacted in 2005 and required that persons selling annuities to senior consumers have reasonable grounds for believing that the recommended product is suitable for the senior consumer. It defined a senior consumer as a person 65 years old or older. This was based on a model law developed by the National Association of Insurance Commissioners (NAIC). Because annuity products often consist of complex financial contracts and the problem of unsuitable products can arise with consumers of any age, the NAIC has amended the model annuity suitability law to make its provision applicable to consumers of all ages. This bill amends Idaho's suitability law to make it consistent with the latest version of the model law by extending suitability protections to annuity purchasers of all ages.

MOTION

Senator Goedde moved to send H 411 to the Senate floor with a do pass recommendation. **Senator Goedde** disclosed that he sells insurance products but not annuities. The motion was seconded by **Senator Bilyeu**. **Senator Cameron** disclosed that he sells insurance products including annuities, but he intends to vote. The motion carried by **voice vote**.

**UNANIMOUS
CONSENT**

Senator Goedde made a unanimous consent request that H 411 be sent to the consent calendar. There were no objections to this request. **Chairman Andreason** will sponsor this bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 3 and 4].

H 412

Relating to Managed Care

Mr. Deal explained that this bill deals with technical directions to *Chapter 39 of Title 41, Idaho Code* to simplify some of the requirements applicable to managed care organizations. The changes include: allowing the Director to set deposit requirements for limited managed care organizations that have flexible reserve requirements, changing filing dates for audited financial reports to coincide with other insurers, and modifying filing requirements related to annual disclosure requirements. These changes will eliminate some requirements that the Department views as unnecessary, and simplify other requirements.

MOTION

Senator Cameron moved to send H 412 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **voice vote**.

**UNANIMOUS
CONSENT**

Senator Cameron made a unanimous consent request that H 412 be sent to the consent calendar. There were no objections to this request. **Chairman Andreason** will sponsor this bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 5 and 6].

H 547

Relating to Standard Fire Policy

Steve Tobiason, representing Property Casualty Insurers (PCI), said this

legislation amends *Idaho Code Section 41-2401* to maintain consistency between Federal and State law defining the term terrorism in fire insurance policies issued in the State of Idaho. The legislation is needed because of a change in Federal law [Terrorism Risk Insurance Act (TRIA)] effective December 31, 2007. This only applies to commercial fire insurance and they can decide whether to purchase it or not.

Senator Goedde asked if the TRIA provides a mechanism whereby the Federal government subsidizes the cost of coverage for terrorism? **Mr. Tobiason** said it is almost as if the government acts as a reinsurer. It raised the threshold of the aggregate loss for the insurance companies in an act of terrorism to exceed \$100 million before there is any reinsurance coverage. Then there is a proportional relationship between the insurance companies and the Federal government if the total loss exceeds \$100 million. **Senator Goedde** asked if there is a minimum threshold at which the Federal protection comes in? **Mr. Tobiason** said the initial trigger for TRIA is that it must be certified that it is an act of terrorism and it must be corroborated by two other Federal officials. The initial trigger has to have caused at least \$5 million worth of damage, but the insurance companies don't seek any relief until it exceeds \$100 million in total losses.

Senator Werk asked if the language in section 5 sub c is identical to the language used in the re-authorized Federal statute? **Mr. Tobiason** said the language that is contained in there is identical to the Federal law but there is additional Federal language that doesn't show on this because there is terminology in the Federal that doesn't fit with this. The actual context of defining terrorism was done this way in the House in 2005, and his understanding is that it is the same language.

MOTION

Senator Werk moved to send H 547 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **voice vote**. **Chairman Andreason** will sponsor this bill.

S 1447

Relating to the Department of Administration & Group Insurance

MOTION

Senator Davis moved to send S 1447 to the 14th Order for possible amendment. **Senator Cameron** seconded the motion.

Senator Davis said he isn't trying to keep anyone from testifying or from further discussion and debate, but individuals who testified before have illustrated to his satisfaction the need to consider some amendments to the bill. He said he is hoping that by making the motion to begin with, individuals could narrow their focus as they participate in making specific suggestions to the language, short of striking the enacting clause, that might help craft a set of amendments that would help advance the need to quantify, identify and ultimately reduce the unfunded liability and yet, at the same time, be sensitive to the concerns and anxieties that current retirees have.

Vice Chairman Coiner said many of the questions revealed that they needed some word-smithing in the bill. For example, Public Employee Retirement Systems of Idaho (PERSI) found some language that gave them discomfort. There are ways to improve and make this bill clearer. **Chairman Andreason** asked if that can be handled in the 14th Order?

Vice Chairman Coiner said absolutely. He is very convinced of the worth of this bill - getting rid of unfunded liability, and for the 65 and older group it is a win-win. The coverage they can get under these programs is far superior to what the State has under their plan. **Chairman Andreason** said when he calls people to testify they should speak to what can be put into the 14th Order to deal with their concerns. **Senator Stegner** said it would be easier for him to understand if **Vice Chairman Coiner** would go through what he perceives to be needed to correct the bill, and that might eliminate a lot more questions and testimony as well.

Senator Werk said he wants to make clear that this bill represents a very dramatic policy change. Whether we think it represents a win-win this year, we're making a policy change that takes retirees off the State plan in terms of supplementing their Medicare, and doesn't allow them to get back on. Right now, if a Senior wants to take advantage of a True Blue plan they could get in the Treasure Valley, they know that if they want to get off that plan they can hop back on to the retiree plan, regardless of what the costs are. He said he thinks this is an important policy consideration. This is not a small policy decision and seniors and retirees will have to make the leap with us in this decision.

Senator Cameron said there may be a perception that doing nothing means that everything stays at the status quo. That is not an accurate perception. The Committee has been put into this box by past legislative decisions and we are now in the situation where doing nothing means an incredible liability to the State down the road, and will mean incredible cost increases both to current employees and to retirees. To do nothing is also an unacceptable approach and will cause greater harm to retirees and greater harm to public employees. That is the dilemma that this Committee finds itself in. It is a departure from past public policy and it is a significant departure. The Governor's office and Mr. Gwartney are to be commended for bringing it to the Committee's attention and trying to help with it. Vice Chairman Coiner and Senator Stegner and others have worked very hard to protect our retirees, and with a few minor amendments, really have done a good job of protecting them by providing better than existing coverage for less money and are still protecting the ability to use sick leave, to have good coverage, but not obligate or hurt future employees and incur the State's liability.

Vice Chairman Coiner explained the changes in S 1447. Section 1, 67-5761 (a) describes the advisory committee. This committee will look at any changes in the plan.

Senator Broadsword asked if this section will still say "may" include employee representatives, or will it say "shall" include? **Vice Chairman Coiner** said it will probably say shall.

Vice Chairman Coiner explained the changes on page 2, line 55 on the draft amendment. He said this part may need minor changes. He said he feels this coverage is bullet proof, far superior to what they have under the State plan. If someone has a situation that the Committee doesn't foresee now, there has been a suggestion to add that the Director has authority to make exceptions to cover those situations. **Senator Davis** said it would

be better to say the discretion is to add, not the discretion to provide a general exclusion. **Vice Chairman Coiner** said an attorney would need to word it, but the motive was to give the Director discretion.

Senator Cameron said the Committee may want to consider some sort of a Sunset Clause on that exclusion. **Vice Chairman Coiner** said if this goes to the 14th Order they can focus on what has to be done there. **Allen Winkle, Executive Director of PERSI**, and his attorney will bring in the section of code that deals with PERSI and sick leave. There are about five words that will change there to bullet proof sick leave.

Mr. Winkle said the wording they are recommending for amendment of sick leave statute will allow the Board to make changes in the plans or accept plans to the extent the IRS allows it, so right now the wording is a group plan. If they find that the IRS doesn't require a group plan, the Board can make those changes and adopt others. This gives the Board the maximum flexibility that the IRS allows. **Chairman Andreason** asked if he stands ready to do that? **Mr. Winkle** said yes, it has started now. This takes awhile because this is not a common piece of law.

Senator Stegner said it isn't their intention to have Committee amendments; the Senate doesn't really allow that. What they are doing is stating the amendments that they think warrant consideration by the whole and it is quite open for anyone to put additional amendments on as they choose to. These are the areas they thought added clarity and addressed some of the concerns that have been brought up over the last two Committee meetings.

Senator Bilyeu said that Amy Wynn was scheduled to testify but was called away from the meeting. Ms. Wynn gave Senator Bilyeu a letter from Sargent Matt Manning from the Idaho State Police that she wanted Senator Bilyeu to share with the Committee. Senator Bilyeu gave copies of this letter to the Committee.

Senator Werk said another amendment that Senator Coiner was thinking about was an emergency clause on this legislation. **Senator Coiner** said that is correct. **Senator Werk** asked why can't we have an advisory committee and then next January pass a piece of legislation quickly with the emergency clause to make it go into effect?

Jim Keating, retiree, said he gave the Committee some written suggestions for some amendments on June 6. Basically the suggestions are to retain an advisory board and defer action until the advisory board has a chance to look at this. He said no one in the field has a copy of the proposed changes, and if the Committee passes this, those question that people may have won't be answered. He said one thing he noticed in the proposed plan is that only 23 counties are included in the True Blue Plan; in the rest of the counties people would have to go to the Flex Plan which costs twice as much. He stated these changes cost more and the retirees get less. He suggested that the Committee amend the proposed bill, get it out for the Committee, state employees and retirees to look at and make suggestions, and work it through a reasonable process. He also said that he can't understand why cutting \$4.6 million, which is what is saved by cutting out the retirees over 65, how that saves \$136 million per year.

Senator Coiner said that this is a lot of information. The question is should the Committee do a sales job on something that they may do in the future and if they can sell it, then pass the legislation? Or do they do the work on the legislation, then go out and sell it. He said that is where this is today. Once the legislation is out, the Department of Finance will have people available, have publications out to notify retirees, people will be there to identify and help them make decisions. He said this was put together quite quickly and there are a couple of omissions that need to be corrected. The Flexi-Blue program is what an individual would buy off the street. The Flexi-Blue that will be available will have benefits that match the True Blue. These are still cheaper and have better coverage than the State plan.

Senator Stegner said it is very important for everyone to understand the roles of the Legislature and the roles of Administration in this issue. This Committee and this Legislature doesn't select the medical plans. What they do is appropriate the money and then set policy that allows the Administration to do that. The Committee has been delving into detail that it doesn't normally get into in this bill in an effort to at least try to explain to people who have concerns what the anticipations are. Ultimately that is the responsibility of the Administration. The Legislature sets the policy and the Administration is charged with implementing it. The public can complain to them directly or they can complain to the Legislature that the policy is flawed in some way. But the Committee is not trying to design a plan policy in this Committee meeting for this Legislative session.

This is somewhat a significant policy change, and there may be all sorts of reasons for this Legislature to take some alternative action to the direction of this bill. But the Committee is not going to solve everybody's concerns about every detail of the implementation of a plan later this year and through the next fiscal year. That is not the Committee's job, and for the Committee to keep trying to go into the minutia of specific plans is not the role of the Legislature. Anyone who came to this hearing thinking that the Committee would be able to design a specific insurance policy in this Committee, that is just not how the system works. They will have to take it up with the Director of Administration and his people, and if they're not responsive in terms of giving information to people who legitimately have a right to have the information to make decisions, then there are all sorts of avenues to voice those complaints, starting with the Governor's office and then bringing them back to this body.

The Committee has provided the information about Blue Cross and what they can provide the State of Idaho for their consideration only as a matter of information on how something might be structured, but the Committee simply can't alleviate every potential fear in this area. At some point the Committee has to move on as to whether or not this is the bill to pass this year for policy changes that have significant ramifications for the bottom line in the State of Idaho.

He addressed Mr. Keating's concern about how a savings from this can result in \$136 million savings. That is not a cash savings or even a financial savings that is available this or every year. It is a reduction in the

unfunded liability which is a calculation by accountants as to what the State has in terms of ongoing liability based on a policy that we have. It is not intended to represent any kind of significant cash savings that we can go ahead and spend in other areas for any other purpose. It is simply an accounting accrual on a liability that is calculated based on state policy, and we are attempting to modify that state policy.

Chairman Andreason said as he understands it in dealing with this group, their primary fear is that they're going to lose their coverage as a result of being over 65 and retired. That is the explanation that the Committee has to come up with to dispel those fears that they have.

John Franden, retiree, who now serves as an elected Ada County Highway District (ACHD) Commissioner, said he has some concerns that may be different. He would not have known about this legislation if a friend who receives communication from the Public Employees Association had not happened to mention it to him. As he read through this legislation something struck him related to his own personal life. He retired in 2004 and when he retired he had over 2000 hours of sick leave of which 600 hours could be applied to a sick leave bank or reserved for him to be used for health insurance at some time in the future. When he put his retirement program together, he chose not to use the State health insurance nor that sick leave bank at that time, nor has he chosen to do that up to this point in time because he has coverage as a commissioner. His plan has been that when he has finished serving in elective office and no longer has coverage there, he would then use those dollars to help pay for his health insurance. This was covered very clearly with PERSI when he retired and was part of the plan, part of the promise, part of the deal that was put together. He said he doesn't know when he will leave public office. However, his concern is with the language that he needed to notify the Department of Administration and accept coverage beginning July 1, if he would then be using up those sick leave dollars to buy insurance that he didn't really need. The Department informed him that he would under this current proposal. He spoke with the Governor about this and Mr. Gwartney and Mr. Gwartney said the intent moving forward is that the program he started would remain in place, but he should let the Department know in June of this year of the estimated intent of his plan for using those dollars. His other concern is that when they turn 65 and qualify for Medicare, could they use their sick leave reserve for supplemental coverage? Mr. Gwartney said that is the intent, but they would be restricted to the policies that are offered through group insurance. He said he would like to see something in this legislation that makes it clear that for those employees who have retired, who are not 65 years of age and have chosen not to avail themselves of using that sick leave bank benefit, nor use the State's group retiree policy, that the option to use it doesn't go away - that they can use it as the promise was made when they first retired and the deal was struck.

Senator Bilyeu asked if Mr. Franden was told that he had to notify this June if he was going to use his sick leave time in two or three years? **Mr. Franden** said as he understands it, the way the legislation is written, he would need to let the Department of Administration know by June 30 that he intends to use the insurance and that he accepts using it beginning

July 1. Now Mr. Gwartney has informed him that those individuals in Mr. Franden's position must let group insurance know what their intent is by June 30 so they can do future planning in the years as they move forward. **Senator Bilyeu** asked if it will be in the amendments? How do people become notified of this - how do we notify people that they have to notify us?

Mike Gwartney, Director of Department of Administration, said there are actually 781 people in Mr. Franden's position. The plan is to start a communication effort right away. Then, if someone doesn't respond, the Department is not going to take their 600 hours away. The amendments clarify that people in that 55 to 65 year old group that have retired, that are vested, will have the continuance of the 600 hours.

Senator Stegner said he thinks they can take care of Mr. Franden's concern by changing the language to say "intends to accept." **Mr. Franden** asked that it say "intends to accept either now or at some time in the future" - something of that nature.

Charlie Rountree, retiree, also an elected official, said his story is almost verbatim of Mr. Franden's. He said he falls in the 60 to 65 group and the language as it is now proposed is onerous, but what was just discussed remedies the concern he has. He said communication on this hasn't been good. He first saw this in letters to the editor and articles in the Idaho Statesman. There needs to be some way to get information out to retirees. Communication is critical.

Senator Coiner asked Senator Stegner in light of the difference of premium under True Blue for north and south Idaho, where does Lewiston hit? **Senator Stegner** said it is his understanding that the True Blue of Northern Idaho applies only to Kootenai County. Lewiston doesn't have that capability. All he can represent is what he heard in this Committee by the Blue Cross representatives that they are actively trying to broaden that and they are optimistic that they can in the future. **Senator Coiner** said that the Flexi-Blue coverage in other counties will have the same coverage for a similar price in the northern counties. With time those can be brought together.

Senator Broadsword asked what happens if an individual retires early but still has a spouse and children that need coverage? Is there some arrangement for individuals who have more than one dependent?

Senator Coiner said they are covered. **Senator Stegner** said it directs in every category for plans to be developed for retired personnel and dependents. It is the directive to the Administration that they be taken care of.

Senator Bilyeu asked about the unfunded liability. One of the things the Committee has heard repeatedly is that communication has really lacked for retirees. What is the problem if we wait until next year? **Senator Coiner** said if this doesn't pass, the \$9600 per employee will have to be added to the numbers in JFAC. One thing he wanted to emphasize is that retirees 65 and older can opt out of the State plan at any time and start in on any of these plans. Communication has been a problem, but the Administration is going to address that. Retirees 65 and older are not

going to be hurt by this. They will have more money in their pocket, have better coverage - visual, dental, hearing aides - all kinds of coverage they don't have now under the State plan for less money. They will have far superior coverage for less money out of their pocket.

Some have said we need to study this, but what is there to study? These plans are in place, people are using them right now and the acceptance rate of these plans are in the 96 percentile where other plans are in the 76 percentile. The escalation of premiums expected out of this is flat compared to the cost of regular health insurance. This is a win-win.

Senator Werk said he acknowledges the stellar work done by Senator Stegner and Senator Coiner. He asked Senator Cameron about the budgeted amount for employee benefits that were used in JFAC (at the \$8200 level). Did he say \$8200 is based on this piece of legislation, or something similar to it, passing? **Senator Cameron** said the \$8200 was based on a figure of not subsidizing, not continuing the subsidizing any further, the retiree side of things. That meant either a significant increase or an adjustment in a bill like this. There was also in that \$8200 a component designed to go towards reserves that was minimized in order to reach that lower number. The original as he recalls was \$9200. That would be the difference per employee. **Senator Werk** said he wanted to be sure, because in another committee meeting Mr. Gwartney indicated what the increase in premium would be that retirees would see if we continued on with the retiree plan. He said he thinks we are talking about the same thing. Either JFAC would go back and pick that up, or not doing that, the retirees would see that spike in their premiums. JFAC having planned at a budgetary level doesn't mandate the passage of this legislation. It only means that the additional would get spread some place. Is that accurate? **Senator Cameron** said JFAC's action was not intended as a precursor to this bill passing, but they were budgeting on some assumptions based on the recommendations from the Change in Employee Compensation (CEC) Committee, and based on those assumptions they would need to make some adjustments one way or another - either through this bill or something similar, or by passing additional costs on to the retirees. The actual cost goes from \$190 to \$249 and may even go higher than \$249 if the costs were shifted completely to retirees.

Senator Bilyeu asked about \$8200 per employee, is that retired employees or all employees? **Senator Cameron** said that is per current employee within each State agency. **Senator Bilyeu** asked how many State employees are there? **Mr. Gwartney** said 19,000. **Senator Cameron** said he wanted to address Senator Bilyeu's question. He said if this was a perfect world we would have started working on this one or two years ago. But, things have changed, the economy is not quite what it was even six months ago. He said we went three years without an increase in insurance premiums largely because there was a large enough reserve to cover them. That benefitted both State employees and retirees. We knew at some point the day of reckoning was coming for putting off those increases, and that hit this year on top of everything else. This resulted in a 29% increase. Senator Cameron noted that in the private sector groups are taking increases from 15% - 20% on the

average. Some groups this year have had 40% increases. This puts the State in a horrible position coupled with the fact that there is now a requirement to track the liability. This was not anticipated. Senator Bilyeu's question was what would happen if we waited? First, prices would go up to significantly higher rates for both employees and retirees. Prices on the Medicare Advantage Plan would go up. Due to the good work of Senator Coiner, Mr. Gwartney and the Department, they have been able to negotiate a great deal with improving the Flexi-Blue product for those employees that are outside the 22 counties, and negotiate that it is a transfer, so there is no underwriting and a person doesn't have to prove insurability. He said he would hate to lose all that while we wait and study it further.

Chairman Andreason called for a vote on the motion for S 1447. The motion carried by **voice vote**. **Senator Werk** voted nay. **Senator Coiner** will sponsor this bill.

ADJOURNMENT **Chairman Andreason** adjourned the meeting 3:05 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 13, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: **Chairman Andreason** called the meeting to order at 1:37 p.m.

Chairman Andreason welcomed **Representative Patrick** to the Committee.

H491 **This legislation changes the size of real property that is eligible to be financed with a deed of trust in Idaho from forty (40) acres to eighty (80) acres, and clarifies the eighty (80) acre limit.** **Representative Patrick** presented the details and reasoning of the bill to the Committee members. He stated the original language of the bill on lines 25 through 29 is quite vague and he was doubtful it would be upheld in any court; therefore, the vague language has been stricken and the bill now just states "eighty (80) acres."

Senator Werk stated he does not understand why there is a need to make the proposed changes in H 491. He does not understand why 80 acres is better than 40 acres nor does he understand why the language is being stricken in the statute. **Senator Davis** stated he has been opposed to this bill; however, the authors are going to a set of amendments that remove the anxiety he had. **Senator Davis'** understanding, from a developer's point of view, if a section is divided up, it divides up quite evenly based on certain acreage numbers. Forty is better than twenty. As developers buy up larger tracts of land, it is easier for them to go out and borrow the money and secure it with a lien or trust deed. Also, the lenders are more willing to loan money for development purposes if they can have a deed of trust because, if they have a trust deed on the property, they can foreclose. They can foreclose non-judicially and a non-judicial foreclosure has no redemption rights; therefore, they deem themselves more secure. Regarding the

language that is being deleted, what happened in the case to which Representative Patrick was referring was that there was a deed of trust on agricultural property and the property was greater than 40 acres. However, the deed of trust said it was 40 acres. The farmer let the property go to sale. The trustee's deed had already been issued. The grantor of the deed of trust filed bankruptcy and tried to collaterally attack the sale. One of the arguments he made to the court was that the ground was more than 40 acres and so they had to foreclose it judicially. Although the judge could not determine for certain whether it was more than 40 acres or not, the instrument said it was 40 acres or less and the statute spells out if the instrument says it, then that is what it is.

Representative Patrick added that H 491 does make it easier to get money for the properties, whether it is for a developer or an individual; also, it is voluntary. One is not obligated to do a deed of trust; s(he) can do a mortgage. It does not hurt anyone but it does open up more opportunities. **Senator Davis** added that if you have a trust deed and it is more than 80 acres, and this is the law, a person still has the right under Idaho law to foreclose it as a mortgage.

Chairman Andreason welcomed **John Eaton**, a Lobbyist for Realtors, to the Committee. **Mr. Eaton** expressed that the Realtors support the legislation and the amendments.

Senator Goedde moved to send H 491 to the Amending Order.

Senator Werk seconded the motion. The motion **carried by voice vote**.

Chairman Andreason welcomed **Representative Schaefer** to the Committee.

HCR49

Stating Findings of the Legislature, Adopting a State Employee Compensation Policy, Adopting Funding Recommendations, and Directing Implementation of Compensation Policies.

Representative Schaefer referenced the Legislature's Workforce Management philosophy, saying that although most people agree with it, it is backing the philosophy up with money that is difficult. He went on to explain the details and reasoning of the bill. Currently, under *Idaho Code*, the Legislature may, by concurrent resolution, accept, modify, or reject the Governor's recommendations for state employee compensation including benefits. This concurrent resolution modifies the Governor's recommendation from a 5% personal funding increase and \$2,075 per employee for employer benefit costs increases to a 3% increase in personnel funding and \$1,575 per employee for employer benefits cost increases. *Idaho Code* also requires the Legislature to make a recommendation regarding the benefit package for state employees. The Department of Administration is required to establish a third high-deductible insurance plan and keep the current Traditional and PPO insurance plans at equal benefit coverage levels for FY 2009. Additionally, the resolution requires state agencies to develop compensation distribution plans; directs the use of salary savings by state agencies; and recommends that elected officials, judges, and commissioners be treated in the same manner as state employees.

Senator Davis asked if the HCR is the actual resolution the Change in Employee Compensation Committee approved? **Representative Schaefer** responded, "No." He said there is a change but was unable to readily identify what that change was.

Chairman Andreason inquired of **Judie Wright**, Acting Administrator, Department of Human Resources, whether or not she knew if the change had been made in the House. **Ms. Wright** replied she did not know. **Representative Schaefer** stated the change was not made in the House but was made by legislative staff but he could not recall what the change was. **Ms. Wright** stated the original Concurrent Resolution said that single employees would not be charged for their health insurance premiums (to a certain point), but everyone else would be charged. That was changed.

MOTION: **Senator Werk** moved that the Committee hold off any further consideration of HCR 49 until the information required is gathered and presented to the Committee members. **Senator Cameron** seconded the motion. The motion **carried by voice vote**.

Chairman Andreason welcomed **Senator Jorgenson** to the Committee.

RS18089

Relating to Insurance and Public Safety Officers

Senator Jorgenson explained the details and reasoning of RS 18089. Currently, a death benefit of \$100,000 is available to the spouse or family of a public safety officer killed in the line of duty. Public safety officers who are disabled are not currently entitled to a disability benefit under this statute. These officers may face additional financial hardship as a result of their disability. This legislation will extend the \$100,000 disability benefit to public safety officers disabled in the line of duty. The federal law (41 U.S.C. Section 3796), after which these provisions are patterned, provides for disability benefits. This disability benefit, like the death benefit, will be separate and independent from disability retirement benefits available from the retirement system, will not be dependent on years of service or age of the public safety officer (which may exempt them from federal tax) and shall not be subject to state income taxes.

Senator Werk inquired of **Senator Jorgenson** if he was trying to pass this bill during this year's current session. **Senator Jorgenson** replied, "Yes."

MOTION: **Senator Werk** moved that RS 18089 be supported by the Committee by sending it to a privileged committee for printing and referred back to the Senate Commerce and Human Resources Committee for a full hearing. The motion was seconded by **Senator Coiner**. **Senator Davis** stated that the Committee has the right to request that the bill be sent back to it; however, the final decision on whether or not it comes back to the Committee rests with the Pro Tem. **Senator Goedde** asked for discussion. **Senator Goedde** addressed **Senator Jorgenson's** statement of this bill being a method of purchasing health insurance, but **Senator Goedde** stated he does not

see anything in the bill that directs, other than \$100,000 payment for someone who is totally disabled. He inquired where in the bill health insurance is referenced. **Senator Jorgenson** replied that **Mike Gwartney**, Administrator of the Department of Administration, agreed to write a rule that would permit the families to purchase health insurance through the State-offered plan. **Senator Goedde** continued, asking about **Senator Jorgenson's** reference to a disability benefit on line 14 of the bill, in the amount of \$100 thousand, questioning the lump sum benefit as opposed to a benefit payable monthly for a length of time, and it appeared to him that if the disabled office wanted \$100 thousand, he would be eligible for it and he could choose whether he wanted to purchase health insurance or not. **Senator Jorgenson** replied that what **Senator Goedde** said is true. **Senator Goedde** questioned the emergency clause of the bill, with the effective date of July 1, 2003, asking if officers who are currently disabled would be eligible immediately for a \$100 thousand disability benefit if this bill was passed. **Senator Jorgenson** replied, "Yes."

Senator Cameron responded to **Senator Goedde's** question about lump sum payments, stating there generally are not lump sum distributions in a disability case, with the exception of the loss of two limbs or blindness, etc. **Senator Cameron** stated he is very concerned now that he has just learned for the first time that **Mike Gwartney** may consider writing a rule to allow others to purchase in to the State plan. It is concerning to **Senator Cameron** because (a) he thinks it is a policy change that ought to have full debate and discussion of the Senate and House rather than be a rule; and (b) when the Legislature is considering possibly removing retirees off the State plan, now opening it up to everyone who wants to come onto the State plan. **Senator Cameron** finds this contradictory in nature. **Senator Cameron** also asked **Senator Jorgenson** why, since he brought a similar bill before the Legislature last year, he is waiting until March 13 to bring it to the Legislature this year? **Senator Jorgenson** responded there is no guarantee the insurance can be put in place; it is a contingency. The officers would have the \$100 thousand, even if the insurance plan was not able to be put together. Addressing **Senator Cameron's** question regarding the bill from last year, that bill did pass the Senate but it did not get through the House. There was no vote taken. He said it took this long to get it before the Senate this year because it has had to go through multiple gyrations regarding what will PERSI do, what will health insurance do, how can we make this work, etc. **Senator Cameron** addressed **Senator Jorgenson's** reference to **Mike Gwartney**, saying he thought he heard **Senator Jorgenson** say he had worked out an arrangement with **Mr. Gwartney** where he would submit a rule to allow others who qualify to be able to be added onto the State's plan. He asked **Senator Jorgenson** if he had heard him incorrectly. **Senator Jorgenson** replied that **Senator Cameron** had heard him correctly and that, perhaps, **Mr. Gwartney** should be questioned directly. **Senator Cameron** asked if **Senator Jorgenson** understood that the individuals who would be disabled would typically be high-risk individuals who would typically cause the rates to go up for everyone else insured through the

State and, by them being participants on the plan, would cause an unfunded liability to increase. **Senator Jorgenson** replied, "That's wrong." He continued that for the individual officers covered under Worker's Compensation and Medicare, it would be the officer's family, who are normal people, who would be offered the insurance. **Senator Cameron** queried how is this bill justified if the Senate passes legislation that is currently before it that removes retirees from the State plan, and their family is not allowed to stay on the State plan? **Senator Jorgenson** stated that the families of disabled officers would be paying their own way. **Senator Cameron** stated that, under a group plan, nobody individually pays their own way. **Senator Cameron** asked why the bill is retroactive to a point in time in order to pick up people. He asked **Senator Jorgenson** to explain the necessity of going back to 2003. **Senator Jorgenson** responded it is because there are officers who were permanently injured back then. **Senator Cameron** stated that, by that logic, we could probably go back many more years in that there were probably many officers permanently injured prior to 2003. **Senator Jorgenson** responded that, after extensive research, the year 2003 was determined to be the year that would be inclusive of just about all officers who had been permanently injured. Furthermore, their ultimate goal was to obtain the health insurance, not the single payment, although the single payment would be at least something for our public service officers. **Senator Jorgenson** stated that if **Senator Cameron** is suggesting the bill be amended to a current date and just the cash payment, he is open to that because he feels the public service officers deserve that. The reality in this is that the very people who inflict the injuries on these officers, we pay their health insurance for the rest of their lives. **Senator Goedde** reminded **Senator Cameron** that when the public officer death benefit was initially passed in the Senate, it was after two officers had been killed and there was a retroactive date at that time, too.

Senator Davis asked **Senator Goedde** if we can provide a privileged disability benefit under Worker's Compensation? **Senator Goedde** responded this is correct and he believes there is also a federal benefit that goes to police officers. **Senator Jorgenson** stated there are benefits provided that are subject to a reduced retirement; they do have health insurance protection for the officer but, bottom line, the officer with the retired income has to go out and replace the health insurance, not for himself but just for his family, and that is as much as 40% of his net income.

**AMENDED
MOTION:**

Senator Werk moved that his original motion be amended to say that RS 18089 be supported by the Committee by sending it to a privileged committee for printing. The motion was seconded by **Senator Coiner**. The motion **failed** by **voice vote**. **Senator Jorgenson** (not a member of the Committee) asked for a roll call vote. His request was denied.

Senator Stegner requested the Committee return discussion to HCR49.

HCR49

Senator Stegner referenced Page 2, sub-paragraph E of the bill, starting at line 22, which was the original language, which was tailored to

comply with what was currently being drafted in what is now S 1447, dealing with some of the active employee and retiree employee benefits. It was the only significant piece that was left in what was originally H 416 dealing with active personnel and their medical benefit. In the original draft was language that spelled out all eligible people who were eligible for medical benefits as active employees were going to be given policies and the only way to make that happen without impacting them was to not charge them a premium. Line 27's language was originally in S 1447. It was going to be a significant tool in how medical insurance costs were to be allocated to departments and divisions.

Senator Stegner said up until recently, the State has not been able to keep a handle on the amount of money that is allocated and appropriated for medical insurance to departments for various personnel. For instance, a department has 100 full-time employees and the department is given an appropriation for the medical benefit for that number of people; however, in a number of cases, some of those employees were not taking the medical insurance and the State had no way to bring the appropriation for that benefit back into the State to use for medical benefits for other areas. This Resolution was an attempt to start getting a handle on that in that it allowed better accounting and, in the process, it would allow the State to sweep back those unused premiums rather than allowing those dollars to stay within that department and be re-allocated for other purposes, which is what is going on. Based on that language, this was added to the Resolution. Then, in negotiations with the Department of Administration and the Governor's Office, that language was taken out because S 1447 was deemed to deal only with retired personnel and we did not want to start getting into the area of active personnel in that particular bill.

Senator Stegner stated to have the Concurrent Resolution match the language of the bill that was going forward, it had to be modified and Legislative Services did that and they did run it by me and the people who were negotiating that bill in the Department of Administration in an attempt to find language that was going to be agreeable to the Department of Administration and the Legislature. That is why Section E was modified to take out the reference to active and personnel with insurance premiums and not being charged for them. **Senator Stegner** continued it is the intention of some in the Legislature to continue to revisit this issue, possibly as early as this summer, looking at some of the active employee language that may be considered in the future.

Senator Cameron inquired of **Cathy Holland-Smith, Division Budget and Policy Analyst**, what the harm would have been of passing the Resolution just as the Committee for Employee Compensation (CEC) had approved it? Would there have been any harm to the budgeting process or to State employees? **Ms. Holland-Smith** responded the harm would have been the misrepresentation because the Resolution would have been shared with all employees and State agencies and it would have been a message that we could not fulfill. They wanted to make sure they were as honest as possible about the impact. That is why the language was changed. **Senator Cameron** inquired of **Ms. Holland-**

Smith if, in addition to her current position, she is also a State employee, stating his concern is that State employees will have the old Resolution, the one passed out to them at the CEC meeting, and they will assume that Resolution is the final version and until there is something that happens differently, they are not going to go to this new Resolution. **Ms. Holland-Smith** said they have a mechanism to inform all of the Human Resource (HR) professionals in the State so that as soon as these changes took place, they would make sure the HR people are all contacted through electronic mail for notification of State employees. Also, the information would be on their website.

Senator Cameron asked that **Ms. Holland-Smith** try to explain to him one more time the net effect of the language removed from the Resolution. **Ms. Holland-Smith** stated a key factor was the Governor's Office and Department of Administration had strong objections to having any kind of provision that stated that individual State employees would receive health insurance, without paying a premium, even though this mechanism would have mandated the premiums for the dependents would have risen accordingly. Therefore, the total amount of money that would have been collected from employees would have been the same; it just would not have been collected on the individual. Rather, it would have been collected on the dependents. **Senator Cameron** said, in his opinion, the original Resolution would have amounted to a substantial change in policy that had not been previously implemented. He asked **Ms. Holland-Smith** if that was a fair assessment. **Ms. Holland-Smith** replied, "That's correct."

Senator Stegner added the official actions of the Legislature deem that until this Resolution by the House Committee and the Senate Commerce and Human Resources Committee and the bodies (the CEC Committee is not an official standing or interim committee of the Legislature and, **Chairman Andreason** added, is not a part of the Senate Commerce and Human Resources Committee), is printed, and this was printed in the House Committee, it was not really made public in any significant way. It was printed in the form it appeared before the Committee on March 13, 2008. **Senator Stegner** continued this was a significant change of policy that would have left the amount of money that active employees would have paid toward their medical benefits the same but it would have shifted between the amount paid for, theoretically, by an employee versus dependents. It was a major change in policy but it was not really a significant financially change for most employees, although it would have been a slight shift for single employees without dependents.

MOTION;

Senator Cameron moved to send HCR49 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. **Chairman Andreason** inquired of **Mr. Gwartney** if he had anything to add to the discussion. **Mr. Gwartney** stated he did not. The motion carried by **Voice Vote**. **Senator Bilyeu** and **Senator Werk** voted nay.

Senator Werk read a portion of *Idaho Code 67-5309(A)(3)* to the Committee, which says:
It is hereby declared to be the legislative intent that regardless of specific

budgetary conditions from year to year, it is vital to fund necessary compensation adjustments each year to maintain market competitiveness in the compensation system. In order to provide this funding commitment in difficult fiscal conditions, it may be necessary to increase revenues or to prioritize or limit certain functions or programs in state government or to reduce the overall number of state employees in a given year or any combination of such methods.

Chairman Andreason asked **Senator Werk** if that language was still in statute. **Senator Werk** replied that it is still in statute. **Senator Werk** said he will not be able to support the motion because in every year since the Legislature passed that, the Senate Commerce and Human Resources Committee has not lived up to that commitment. **Chairman Andreason** spoke to **Senator Werk**, stating that in the CEC meeting, as a part of passing the Resolution, he stated the CEC Committee was basing the level of salary increase on the fact that the revenues are down. **Chairman Andreason** asked **Senator Cameron** at that time, if when the senators come back January 2008 and the revenues have come up, would it be feasible for the CEC Committee to reconsider the level of salary increase that the Senate Commerce and Human Resources Committee is giving by one or two per cent, effective March 1, 2008. **Chairman Andreason** then asked if **Senator Cameron** would like to repeat the answer he gave to **Chairman Andreason** at that time. **Senator Cameron** said he had responded to **Chairman Andreason** that, should revenues be there, that could certainly be one of the first items addressed. **Senator Cameron** then went on to respond to the comments **Senator Werk** had just made, by saying that he does not think the Committee has shirked its duty every year. The Legislature had the ability and resources to fund the recommendations that were presented last year and it did so. He said while it is difficult and even painful, he said he is not sure the Committee does State employees any good by having a five percent increase and then turning around and having hold backs or cutting positions in agencies or making them work without pay, which has been done before. He continued he understands that statute and the goal, and to **Senator Werk's** comment that he was sure, in future years, **Senator Cameron** and others would be here to take care of matters when there is revenue. **Senator Cameron** said he could guarantee that. However, he stated the Committee also has to be responsible and they have attempted to set a responsible budget, while hoping the economy does not worsen so that, at next year's legislative session, if the economy has rebounded a bit, matters can be addressed in the manner they should be addressed.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

RS18092

Joint Memorial

Senator Goedde said the language found here is proposed by NCOIL, the National Conference of Insurance Legislators who share concerns about the optional federal charter system currently proposed. This

system if enacted, would bifurcate insurance regulation, make national carriers less responsive to Idaho needs and could threaten state collection of premium taxes. If this federal legislation passes it would tap into \$14 million of insurance taxes and is the fourth largest funding for the State of Idaho.

MOTION: **Senator Broadsword** moved to send RS18092 to a privileged committee to print. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Steve Keys, Deputy Administrator, Department of Building Safety**, to the Committee to present H476, H477 and H480.

H476 **Relating to Public Works Contractors**
Steve Keys said this proposed legislation would review *Section 54-1904, Idaho Code*, establishing new limits on Public Works Contractor Licenses in Idaho. In addition to revising current classes to recognize inflationary impacts, the legislation established a new "Unlimited" category for very large projects. The "Unlimited" classification would apply to contractors designing to bid contracts in excess of \$5M, and would require a minimum net worth of \$1M with \$600K in working capital. The net worth and working capital requirements for the existing categories are referenced in administrative rule, with the "AAA" level requiring \$600K in net worth, and \$200K in working capital.

MOTION: **Senator Goedde** moved to send H476 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

H477 **Relating to Manufactured Home Dealer & Installer Licensing**
Steve Keys said this proposed legislation expands the definition of "responsible managing employee" or "RME" to include the representatives designated by installers, manufacturers, and service companies, in addition to the previously included representatives of retailers and resale brokers. These previously included "RME's" were inadvertently excluded by the definition of "responsible managing employee" included in last year's House Bill 100.

MOTION: **Senator Stegner** moved to send H477 to the floor with a do pass recommendation and be placed on the consent calendar. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

H480 **Relating to Installation of HAVC Systems**
Steve Keys said this proposed legislation revises *Section 54-5001, Idaho Code*, adopting the 2006 International Mechanical Code, the 2006 International Fuel Gas Code, and parts V and VI of the 2006 International Residential Code. These codes form the regulatory bases for the HVAC industry in Idaho, and the adoption of the 2006 versions brings these codes into conformity with the 2006 versions of other International Codes already adopted. The legislation also gives the HVAC board authority to revise and adopt later versions of these codes as they become available.

The proposed legislation also changes the definition of agricultural buildings to farm buildings, and is consistent with the definition also referenced in the International Building Code. The reference to “agricultural zoned property” is intended to clarify that a structure cannot be considered a farm building unless it is located in an area where any applicable zoning regulations allow for farming. It is not intended to reflect specific zoning terminology imposed by any jurisdiction.

- MOTION:** **Senator Broadsword** moved to send H480 to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.
- MOTION:** **Senator Broadsword** moved to approve the minutes of February 12, 19 and 26, 2008.. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.
- ADJOURNMENT** **Chairman Andreason** adjourned the meeting at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 18, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk and Bilyeu

MEMBERS ABSENT/ EXCUSED: Vice Chairman Coiner

GUESTS:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: **Chairman Andreason** called the meeting to order at 1:36 p.m.

Chairman Andreason welcomed **Damien Bard, International Trade Division of Idaho Department of Commerce**, he introduced **China Representative Dr. Chao Guoli**, **Dr. Guoli** said it was his pleasure to be before the Commerce Committee to update the activities he has been engaged in on our trade behalf over the last year.

The United States of America is China's second largest trading partner with \$302 billion US dollars in trading volume. This has increased by 15% since 2006. China imported approximately \$69 billion US dollars in American goods in 2007. Although there is still a trade imbalance, we see positive signs that the growth rate of American exports to China is faster than the import rate (17.2% vs. 14.4%).

China's economy is developing quickly with GDP growth rate of 11.4% last year. The strong economy generates greater demands for American goods and services. Idaho is benefitting from China's fast economic development.

Idaho's exports to China grew 21.9% or \$891 million in 2007. Even with Micron's one-time big sales to Singapore in 2007, China is still Idaho's number 1 trading partner in the last two years.

The Governor's Trade Mission to China last November was very successful. There were 16 companies in the delegation that visited four cities in China. Almost immediately after the trip, we generated sales contracts for our companies in agriculture and machinery and built a food foundation for further sales for nuclear machinery businesses. Let

me give you just one more example; Double L (a potato harvester machines manufacturer in American Falls) is going to ship one potato seeds planter, one harvester and one windrowers on Tuesday. The order came right after the Governor's Trade Mission which visited Harbin, Heilongjiang Province, Northeast China. There are continuing trade leads for Premier Technologies in Blackfoot, Standlee Hay companies in Eden, as well as many other companies.

Senator Broadsword said you mentioned that the Double L Company will be shipping a potato harvester, seed planter and one windrowers to China. Does Double L plan a collaboration with your workers to show you how to use and maintain the equipment? **Dr. Guoli** said the representatives from Double L will come to China and teach the farmers how to use the equipment plus teach the technicians how to fix the equipment. They plan also to have spare parts for the machinery in stock for their replacement needs. This equipment will be used on a big state farm bordering Russia so we are launching a partnership with Double L Co. and our farmers to improve the operation of the machines for our soil and crop.

Senator Werk asked what type of investment is the State of Idaho making in the China Trade Office and what type of revenue generation will we see? **Mr. Bard** answered that we have made a \$150,000 investment in the Shanghai Trade Office and they are our number one trade partner. The returns on this investment have been 10-15 times over. Markets in China are the markets of growth for our companies. These companies are not expanding broadly in the United States so they are looking for international markets such as Russia, China and India for their main growth in their business. In terms of Micron's business, which is the lion share of Idaho exports to China at this time, many of their products once shipped to China are going into iPods, cameras and personal computers. Certainly, when it comes to our largest private sector employer, many of those jobs are specifically tied to this trade.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Chairman Andreason welcomed **Mike Larsen, Bureau Chief, Idaho Department of Finance**, to the Committee to present H448, H449 and H450.

H448

Relating to the Idaho Escrow Act

Mike Larsen, Bureau Chief, said the purpose of this bill is to amend the Idaho Escrow Act that, if adopted, would clarify by a simple change in sentence structure that a natural license may be denied by the Director if the applicant has been convicted of any felony. This legislative idea would provide that escrow trust fund accounts may be established by a licensed escrow company at a financial institution approved by the Director. The primary purpose for this legislation is to add consumer restitution as a remedy that the department can seek administratively or in court in an action to enforce the Idaho Escrow Act.

Other remedies also added by this proposed amendment provide for impounding of an account in emergency situations on page 3, lines 22-24. This impounding of accounts would occur pursuant to the due process requirements in the Idaho Procedure Act and provides for remedies that may be sought in court including an asset freeze, etc.

Senator Werk said that on page 3, line 32 provides the Director of Department of Finance the ability in the case of fraudulent activities to have a more robust response to those activities. One of the responses would be to issue a declaratory judgement that could clarify that particular action. **Mr. Larsen**, said the reference to a declaratory judgement is one of several remedies that the Director would be able to seek in a court action. This is not something that the Director could make declaratory judgements on his own but would require a due process and procedural requirements in the judiciary would have to be undertaken first.

MOTION:

Senator Stegner moved to send H448 to the floor with a do pass recommendation. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

H449

Relating to Idaho Escrow Act

Mr. Larsen said H449 is a bill to amend the Idaho Credit Code that if adopted would add a mortgage retail lending licensing exemption for companies who are already licensed under the Idaho Residential Mortgages Practices Act. This is a regulatory reduction measure to eliminate an unnecessary dual license requirement. Under the current statute we have approximately 700 companies in the Idaho Credit Code that must have that Regulated Lenders License in addition to the license under the Idaho Residential Mortgages Practices Act. It is a duplicative situation that is a regulatory burden. Eliminating this licensure requirement will be a positive measure which will not compromise protections to the public and without effecting the departments ability to appropriately regulate these lenders under the provisions of the Idaho Residential Mortgage Practices Act. The second portion of the bill eliminates restrictive and unnecessary limitations placed on a company from relocating more than five miles from its original licensing location.

Senator Broadsword asked what is the fee that will be saved by the mortgage lenders not having to do two licenses? **Mr. Larsen** answered the annual license fee is \$150 which would no longer be required.

MOTION:

Senator Broadsword moved to send H449 to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

H450

Relating to Residential Mortgage Brokers

Mr. Larsen stated this bill is an amendment to the Idaho Residential Mortgage Practices Act and if adopted will help define several federal acts by taking out of the statute the reference to specific years and handle that by administrative rule. Another item that this bill will accomplish on page 2, lines 24-25, clarifies that Idaho Residential

Mortgage Practices Act applies to loans to all one to four family dwellings in Idaho regardless of occupancy. The definitions of mortgage brokering activities and loan origination activities include engaging in such activities for compensation or gain or in the expectation of compensation or gain to eliminate the argument that we have heard that no violation of law has occurred because they didn't get paid. This enable the Director to adopt a pre-license test requirement by administrative rule. Currently we have a \$10,000 bond requirement and the pre-licensing test requirement but the competency requirement would replace the \$10,000 bond requirement.

Senator Davis asked how does a competency examine help protect consumers in the event of misconduct? **Mr. Larsen** replied the bond has functioned primarily as a filtering mechanism. **Senator Davis** said even in spite of the bond, it hasn't served to filter out individuals as the remedy to the department and his understanding is that we are the only state imposing a bond, how will a competency exam going to protect the consumer? **Mr. Larsen** said one of the overall purposes of proposing to eliminate the \$10,000 individual bond is Idaho's attempt with our sister states around the country to promote uniformity in licensing laws. In January of this year we joined with six other states and join the nationwide Mortgage Licensing System. We are not proposing to eliminate the bonding requirements. At the company level those bonds would still be in place. **Senator Davis** restated that he understands that the mortgage lender himself still must maintain the bond. Individuals that work for the mortgage lender (loan originator) will still be covered by the mortgage lender's bond. **Mr. Larson** responded that is correct.

Senator Bilyeu asked for clarity on the expectation of compensation or gain target? **Mr. Larson** said they would be mortgage loan originators, lending and brokering as defined in the Residential Mortgage Practices Act. This language is to ensure an individual does not have an out simply because they were not paid by the person they were performing services for to engage in those activities without a license. **Senator Goedde** said to suggest that someone pass a test to be licensed may eliminate the dumb mistakes but someone who wants to defraud customers will have enough knowledge to pass a test.

MOTION:

Senator Cameron moved to send H450 to the floor with a do pass recommendation. The motion was seconded by **Senator Stegner**. The motion carried by **Voice Vote**.

Chairman Andreason welcomed **Representative Max Black** to the Committee to present HCR53.

HCR53

Representative Black said this legislation is a rule that the Division of Building Safety Department came out with that eliminated an exception for the installation of water heaters.

Senator Davis said the Commerce and Human Resources Division moved to approve this rule and the House rejected the rule. He has received input from his constituents at home that suggests that the House was correct and the Senate got the vote wrong. **Senator Davis** said the rule deals with the appliance plumbing specialty license and the

requirements of water softeners, water heaters and home filtration systems and they ask the Senate to reject the rule and rewrite the rule to be standards that are industry sensitive. **Steve Keys, Deputy Administrator, Building Safety Department**, said the rules hearing in the House Business Committee related to the amount of experience in the industry that an individual has to have to gain his license to install water softeners and our department thought that this issue had been vetted, but it had not. Our Department concurred with the House Business Committee's decision to reject the rule. **Senator Stegner** asked that was after you presented this rule in this Committee? **Mr. Keys** stated that is correct.

MOTION:

Senator Stegner moved to send HCR53 to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

GUBERNATORIAL APPOINTMENT:

Chairman Andreason introduced **Judie Wright** who was appearing before the Committee for approval of her appointment to Administrator of the Department of Human Resources commencing January 10, 2007 and expiring at the pleasure of the Governor.

Ms. Wright said she has worked for the State of Idaho for 33 years and more than 30 of those years were for the Division of Financial Management. At the Governor's direction she was assigned to change the way we deliver human resource services in the state. In early spring they contracted with K Group to come in and reevaluate all the employee classifications which pay schedule and structure, trained 17 additional state employees to be job evaluated and they now have 50. We have completed an agency head study request with Hay Group. In April we did a pilot project with seven agencies to delegate human resource authority and these agencies now have the HR authority. We have worked with PERSI and Department of Administration to complete a project that the Legislature has been asking for several years is to coordinated CEC package report.

Chairman Andreason asked prior to your reassignment to the Department of Human Resources had you had any experience in human resources? **Ms. Wright** responded throughout the 30 years that she worked for the Division of Financial Management over 20 years she was a Financial Analyst and was a Bureau Chief for the last three years. She had worked with several large agencies including Health and Welfare, Idaho Transportation Department and she had the assignment of Division of Human Resources for about ten of those years. She has worked with large agencies on their human resource issues that have come through the Division of Financial Management for certain things to be approved. Early on in her career she did the HR work for the Division of Financial Management, since small agencies don't have their own HR person. **Senator Broadsword** said she noticed your appointment is retroactive to January 10, 2007, is that common for an appointment to be retroactive? **Ms. Wright** said she could not answer that question. **Chairman Andreason** stated if it wasn't retroactive we would not have her in that position at that time, so they have to make it retroactive from the point that she was appointed. **Senator Werk** asked if you have been in this position a little over a year

what do you think your role is as the Director of Human Resources? What can the employees count on from you? **Ms. Wright** said one of the things the employees can count on from her position and the Governor is that we will continue to push to try to get employees salaries as close to market as possible. We are working with the delegated agencies and the smaller agencies we still do all the work for them that we have done in the past. She has served on three different task forces in 1997, 1999, and 2004. All three of those task forces came up with the recommendation request that the larger agencies have the delegated HR authority because the Division of Human Resources was just reviewing all of the work that those agencies had already accomplished and was causing a slow down in the hiring and promotion process. There are a couple of agencies now that have HR officers or managers to be delegated the nature of their job descriptions. Those individuals have the skills to do HR work within their agencies. There are two agencies that have HR Officers that do not have delegated authority. The Department does not feel that they have the skill set yet to perform those duties.

Senator Werk asked have you developed standards and written documentation to indicate the level of human resource capacity that you want to see before you delegate this authority so that agencies might be able to assess whether they have the skill sets? **Ms. Wright** responded that we do not have anything in writing and that is in our work plan. The Department knows by the nature of the agencies that we have worked with and the individuals in their employment whether or not the skill sets are there that they can have the delegated authority. Those indicators are how many times or if we have to turn some of their paperwork back to them or problems with complaints and that is the standard that we are using right now.

Senator Werk said in the last year communication through the ranks of employees has been difficult. There have been proposed changes and upset within the workforce. His observation has been that communication through the workforce has not been very effective? What do you see can be accomplished to promote effective communication within the state's workforce? **Ms. Wright** said that one thing that we have been doing is we are working closely with department directors involved and that has helped in agency communication and money issues. We are trying to do a more coordinated approach on how we handle human resources in agencies. **Senator Werk** stated my impression is that the Legislature was approached by the Department of Administration Human Resources with plans that your division did not have a handle on actual data, health care coverage, budget staff developing information that we could use to make decisions. How do you develop plans without the collection and the analyzing of the data? **Ms. Wright** said the Division of Human Resources does not deal with group insurance as that is dealt with under the Department of Administration.

Steve Keys, Deputy Administrator, Department of Building Safety, stated this proposed legislation mimics the language relating to the definition of a farm building that was contained in H480 and previously reviewed by this Committee relative to H481 which applies to plumbing and plumbers.

Senator Broadsword asked could you speak to the amendments that were taken out and added in the House Committee? **Mr. Keys** said after the concerns were brought forward relative to the water treatment licensing in the House, this bill was amended to remove any language relating to requiring licensure of water treatment installers.

MOTION:

Senator Goedde moved to send H481aa to the floor with a do pass recommendation and be placed on the consent calendar. The motion was seconded by **Senator Broadsword**. The motion carried by **Voice Vote**.

H556

Energy Savings Performance Contracts

Chairman Andreason said that **Mr. Watts, Veritas Advisors,** representing McKenstry Industries, Inc. made a recommendation and **Chairman Andreason** asked him to step to the podium to present this information. **Senator Cameron** said maybe before **Mr. Watts** presents his recommendation the Committee could hear the legislation proposed before them. **Chairman Andreason** stated that he thought it would be appropriate to hear the recommendation first. **Mr. Watts** said he has been discussing with representatives of the Associated General Contractor's concerns about H556 and perhaps the unintended consequences of this bill. He has worked with Mr. Sullivan who represents ABC's interest as well as Mark Dom and we are close to identifying an opportunity to address our concerns as well as keep in tact the integrity of this legislation. My request was to hold this bill until Thursday's agenda before presenting. He thinks the language should be clarified to primary and secondary education facilities in addition to state buildings and universities. **Senator Cameron** asked who are you representing on this issue? **Mr. Watts** answered that he is representing McKenstry Industries, Inc. which is an energy firm that is located in Washington, Oregon and Idaho.

David Bennion, retired engineer for CH2M Hill, said he was assigned to Governor Kempthorne's task force to take a look of the procurement process of bidding in the State of Idaho. We looked at the issues in this bill before you today because of complaints with the state relative to contracting that is allowed. *Section 67-5711D, Idaho Code,* is a performance contract. The intent of the law is that the state go through the traditional advertising, notice and bid process. Which would be the state procures a design, advertises the bid notice, orchestrates the formal bidding procedures, selects a contractor and builds the project. The goal of the procurement process is to procure the best quality project and the best value of the public in a fashion that is fair to all state holders involved. There are some additional methods of procurement that the state has as an option, 1) Design build 2) Performance contracting. That legislation was developed to respond to

conservation and energy. If you were an energy provider or equipment supplier to go into an existing facility and audit the facility and come back with a proposal to the owner. Fund it and construct it to save cost to the owner and save energy. Under the performance code it didn't name existing facilities the consequence of that has been a number of contract vendors have gone to do an energy project with local government for an existing facility and then in the construction project they decide to add another facility or building onto the project whether it is energy related or a new classroom building. You would be saving energy because they are building an insulated building. The bidding procedures is sidestepped in this example. The proposed legislation clarifies that energy savings performance contracting is applicable only to existing facilities. This performance contracting methodology is not applicable to new facilities to be constructed. New facilities are already required to comply with the provisions of the Internal Energy Conservation Code, and legislation is being considered that will encourage new facilities to surpass code requirements. The need for this clarification results from public entities attempting to construct new facilities under the performance contracting umbrella.

One of the first fines the licensing board had was in a school district which was a big fine to a national company. The school board was embarrassed and the company was embarrassed and the patrons were mad. **Senator Cameron** said we are running out of time. He wanted to make sure he understood the meat of H556. He said adding the language to the existing facility and simply limiting energy performance contracting to existing facilities would be best rather than new construction. **Mr. Bennion** replied that is correct with the exception that if you go into a new facility for an audit and there is work to be done to the facility you would have to submit for bid. The requirement is once you audit that building and it is going to go to the bidding process, your company has to go through the normal procurement processes of the state bidding. **Senator Cameron** asked would an outside company be able to come in and do performance contract on a building that is yet to be built? For example the company goes to a school district and if you will contract with us, we will do an energy performance program that will save the district money and build a whole new campus. **Mr. Bennion** said no the legislation says existing building. **Senator Cameron** asked under the current legislation that is permissible without this new language? **Mr. Bennion** said under the existing legislation, companies that are proposing that to their clients, and it happened to the Minidoka School District last year at a job, it was protested and they had to back up and they lost a years worth of construction and a lot of money. **Senator Davis** asked for new construction the International Energy Conservation Code would still apply? **Mr. Bennion** said it would apply under either procurement process. **Senator Davis** asked for clarification not where you have the boiler in the corner it would be if you have the boiler in an out building or you propose to put it in an out building does that qualify as new construction or part of the existing facility? **Mr. Bennion** said if it is an incidental shell it may be constructed by the energy company but if it is a building that should be procured and they procure it under a legitimate process. They should

go out and bid it in the market in a fair way and advertise the project. **Senator Davis** stated he knows the majority leader and he knows how to put the language on that **Mr. Bennion** and **Mr. Watts** can agree too but if you wait until Thursday, it will be difficult to get it through and back to the House for concurrence. If you will allow us to send it to the amending order today and work on it hard we can fix this bill and get it back to the House before the end of the week.

Chairman Andreason stated that he has been meeting with **Mr. Watts** and his group was to write a letter of intent and asked me to hold this bill until Thursday so they could get the letter written. He did not know that the Committee would have a problem with waiting for **Mr. Watt's** letter to be brought before the Committee. **Senator Davis** asked was it your intent then to take this legislative intent letter to spread it on the pages of the Journal or was it just something you would put in your Committee minutes as the intent of this Committee? **Chairman Andreason** said they had not given him that answer yet. **Senator Davis** said he would just as soon amend the bill, you will not get a better time to change language then right now, holding this bill to the Thursday meeting will be too late to fix things. Either this bill is going to get stuck until Thursday and decide whether to send it to the amending order or alternatively they are going to agree to take it to the amending order right now or we take it up on Thursday and send it out as written.

Senator Cameron said there is a fourth alternative and that is we send the bill out with a do pass recommendation and if they come up with an amendment that both parties agree too, we send it to the amending order and then it gets sent back. **Senator Stegner** asked would an amendment satisfy your client? **Mr. Watts** said he was caught in an agreement that he made with a fellow he mentioned earlier because we all work here and we are trying to be sensitive to the lateness of this bill. We were trying to find some alternatives without that if that is the only recourse then certainly my clients would like to go there, but I am trying to be sensitive to the individuals he worked with earlier that were in agreement for a letter of intent which would be spread across the pages of the Senate Journal. That was what the discussion was in the Chairman's office. We have some proposed language and they saw it for the very first time today and we had suggestions for amendment but he wants to be true to the discussions. **Senator Stegner** stated letters of intent are not nearly satisfactory as statute from my standpoint. If you can reach an agreement on amendment, he is perfectly willing to work toward that but he is not very excited about intent language in the bill or letter of intent being spread across the Senate Journal. It does not give access to the opinions of this Committee and, therefore, the Legislature. **Senator Cameron** said a letter of intent read across the Senate Journal of one body is as about effective of any letter. It is not effective for law and it will not stand up in court. If there needs to be a fix here, he agrees with **Senator Davis** it needs to be fixed statutorily.

MOTION:

Senator Cameron moved to send H556 to the floor with a do pass recommendation. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**. **Senator Cameron** stated that this

motion would be with the intent that both parties could get together and come up with an amendment with the possibility of sending it to the amending order. **Senator Davis** responded as long as the proponents of the bill will promise to continue to work in good faith, otherwise what this motion does is gives one of the parties less incentive to negotiate. We put the bill on the floor, why should they negotiate in good faith?

MOTION: **Senator Broadsword** moved to approve the minutes of February 28, 2008 and March 11, 2008. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

ADJOURNMENT: **Chairman Andreason** adjourned the meeting at 3:00 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 20, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: The meeting was called to order by **Chairman Andreason** at 1:34 p.m.

GUBERNATORIAL APPOINTMENT: **Chairman Andreason** announced that the Committee was ready to take action on the appointment of **Judie Wright** as Administrator to the Department of Human Resources to serve a term commencing January 10, 2007, and serve at the pleasure of the Governor.

MOTION: **Senator Davis** moved to send the appointment of **Judie Wright** to the Senate floor with the recommendation that the appointment be approved. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

H592 **Film and Television Production Business Rebate Fund**
Representative Eric Anderson said this legislation establishes a program for the media production industry in Idaho. The Department of Commerce would utilize the program as an economic stimulus and to develop a media industry workforce by providing a cash rebate on specific Idaho expenditures on qualified media production projects. Currently, 45 states including western states Utah, Washington, Oregon, Wyoming and Montana, as well as 19 provinces and countries around the world are benefitting from similar film incentive programs that attract media production expenditures. Idaho is seeking to compete and build an industry in a global market. He believes this will be a real economic stimulus to the rural districts of Idaho.

Vice Chairman Coiner said the program would provide a 20% rebate on specific Idaho expenditures if at least \$200,000 is spent in Idaho and when the production hires Idaho crew members. Why the limit of \$200,000? **Representative Anderson** replied that there are many small productions that our available to be produced and he believes that

question could be answered better by **Acting Director of the Department of Commerce, Don Dietrich**. **Senator Broadsword** stated she is very supportive of the concept of the film industry coming to Idaho to spend their money in our state, but she has concerns over the 20% rebate. In the back-up materials you provide she sees that the State of Utah has just gone from 10% to 15% rebate, did we really feel that we needed to go 5% over what Utah is offering to try to attract this business to our state? **Representative Anderson** answered that 20% is a maximum percentage number that the Department of Commerce felt very comfortable offering and also realize the maximum rebate per production is \$500,000 cap. The key to bringing this type of industry to the state is for it to be attractive. Many productions cost millions of dollars to produce and if our state could attract some productions with these budgets they would be a benefit to our state's economy.

Representative Anderson yielded his time to **Don Dietrich, Acting Director of the Department of Commerce and the Administrator for Economic Development**. **Mr. Dietrich** said he is not an expert on film and media production Commerce recognizes the film industry is a good fit for our mission of creating jobs, strengthening communities and marketing Idaho. Working towards a diverse economy in Idaho is a top priority for the Department of Commerce as we are actively recruiting industries that bring new enterprise payroll to the state. The film industry, while not a traditional brick and mortar industry that we would historically recruit, is an industry that has potential to bring new dollars and significant economic job opportunities to Idaho. Billions of dollars are spent every year in the film industry and television productions and competition between states and foreign countries to attract this industry is fierce. In 2003 there were 16 states that had production incentives. In 2006 there were 37 and today there are 46 states and 19 countries with these incentives. Recent productions that were set in Idaho were not produced here. Approximately \$20 million in production expenditures could have been spent in Idaho in recent film productions including Bonneville, Lost Holiday and Georgia Rule. Instead these productions were shot in Utah, Alberta and California because of meaningful incentives offered by these areas.

Mr. Dietrich stated one state that is a formidable competitor with Idaho in all aspects of economic development is Utah. Utah has been successfully attracting film and television projects into their state for years and media production is now a significant economic component of their economy. Utah has a thriving film industry and a strong crew base. Their economic stimulus program has been at work in their state for five years. According to the Utah Governor's Office of Economic Development, Utah's incentive program has reported a \$12 return for every \$1 spent for the fund. Roughly 1700 industry related jobs have been reported to have been created in Utah in 2007 and 2008 alone. H592 is closely modeled after Utah's program in our analysis of targeted industry film production. Business would increase outside investment into Idaho and help diversify our economic portfolio. Film and television production is a clean, high tech, well-paying industry. The business of creating entertainment is recession proof. This industry

continues to expand every year with new technology and distribution platforms. This legislation establishes a program to grow the media production industry in Idaho. It equips Idaho to compete and puts us on the playing field with 46 states and 19 foreign countries. It is an Idaho economic stimulus program. We can compete in the filming industry in the global market.

Senator Goedde asked why should we single out one particular industry and give it incentives over others? **Mr. Thompson, Idaho Media Professional**, answered he did not think that we were necessarily singling out one particular industry. This industry like many takes time to develop the broad base of talent in order to get the industry up and running. It also is an industry that stands alone. It is clean, high tech and it does take time to develop a base. We know that it is an industry that creates an opportunity for billions of dollars worth of economic activity. We are state 47 if we get this legislation passed in having an economic stimulus package. If we want to play ball in this arena, it is a competitive landscape and the industry has great potential for our state.

Senator Bilyeu asked are you aware of any proposed films or projects that might be coming our way if we pass this legislation? **Mr. Thompson** said we have the film group here and they are at the forefront of this legislation, may I defer this question to **Kathleen Haase**? **Ms. Haase** said there are a number of opportunities and **Mr. Thompson** listed three films in his testimony that Idaho has missed the opportunity to have come to the State of Idaho, that were set in Idaho. There is one other film project that recently came up in the press of a book written by a Wyoming writer set in Sandpoint and the same producer bought the rights to this film that produced Georgia Rule which was also set in Idaho and was shot in California. This would be a very good project and a high profile type of film and we would like to be able to compete for this business and Wyoming really wants the film to be produced in their state and they do have incentives in place. The film might go to Alberta like many other projects that are set in the north of the state because of the resemblance to the area.

Senator Stegner said he was not a real fan of this legislation and will pose some questions. Why are we including, for instance, the sound recording industry and if we pass this bill why would they not be coming to the Legislature for the same incentives? **Mr. Thompson** said he has his staff here today and they are prepared to answer some of these questions. He deferred some questions to that group. **Senator Stegner** said he understands that you might like to do that, but you are here representing the policy of the State of Idaho under the Department and he thinks it is appropriate to know what the Department wants to do in this regard. How far are you prepared to take this through various industries? For instance, if you single out the film industry why not software industry? We do not have a rebate for that industry. It is a very clean industry, attracts jobs, has the same general benefits from the Department's point of view, what the State of Idaho can afford and where they will draw the line on the incentives? **Mr. Thompson**

answered he is in favor of building our businesses and clean industries. We have had a problem with diversification in this state for quite some time and we are in the process of pursuing some of the industries that we have in the state. A major economic downturn is a major concern to him because we have tended to cluster a lot of our businesses in relatively small clumps. A major economic downturn would threaten the stability of the state. He sees great benefits in being able to reach out and diversify into other areas. He does not think that the state should pay the way for many of these industries to come into the state. We have rolled out certain incentives that the Department feels are necessary to compete with other states, it is the landscape we are playing in. We can either ignore those or we can choose to play ball in those areas whether it would be in the software industry, or aircraft industry or what have you. The state needs to make up its mind which industries it wants to attract into the state and the Department has laid some decent ground work this year as far as being able to entice some of the larger industries that will provide both a new tax base and some new jobs.

Senator Stegner said he feels that there is no industry that would not be supported by the Department of Commerce in their efforts to gain some type of tax benefit/incentive from the Legislature. **Mr. Thompson** answered he thinks from a tax revenue standpoint and job creation, the Department would not be here if we were talking about incentives for call centers. The film industry pays well and the average payrolls is \$75,000 per year for those individuals gainfully employed in the film industry. We are charged at the Department of Commerce for improving the quality of life for the citizens of this state and part of that is that we are on a quest to raise our wage levels across the state. The Department would stand before you and ask for an incentive if it were not robbing funds from the general fund that ultimately would not be replaced over time. He would not stand here today and argue for this particular piece of legislation if he did not think that there was potential to build an industry out of this bill. Utah did not have a great industry the first year that they launched their incentive. It has taken them five years but they are generating millions of dollars of revenue back into the state. They are thrilled with their results. We do have examples of other states who have been successful in being able to create an industry in their state and Idaho wants to play in that game.

Vice Chairman Coiner stated the film production industry is an incredibly mobile industry. There are production individuals in California that have warehouses full of trucks loaded up with props; cameras, and equipment they can set out for any state within 24 hours, set-up and start shooting film. It is not like an industry that will come in and set-up and be here for a year or more. The State of Idaho has many different scenery venues that they can choose from to produce films. **Senator Stegner** told **Vice Chairman Coiner** what you have described may be true but it also strikes him that this industry has gotten induced to being bribed. They come to any location as long as they are bribed and he finds that to be exactly the case of this bill. No where else in state law have we set-up a specific fund to bribe businesses to come to our state

and receive a 20% discount in anything they spend in the state and he does not find this appealing for the State of Idaho to be engaging in. **Vice Chairman Coiner** said that if you have to bribe them to stop in Idaho, is the off-setting rewards greater than the bribes? **Senator Werk** said we have given the Director of the Department of Commerce a million dollars per year to use as enticement to close the deal with businesses. The Directors use that money wisely and have brought numerous companies to Idaho. In essence he sees this bill as the same type of fund and in this case there are many sideboards as to what you can use it for and what has to be invested in order to get the dollars. **Senator Stegner** asked **Senator Werk** is the Department of Commerce fund limited to one industry or is it open to all industries that would come and provide permanent residence in the state and provide permanent employment for our workers not just temporary jobs. **Senator Werk** said maybe a film production is a temporary entity in the state but a film production a month is a permanent industry in the state. He views the bill as a way to start an industry that has continual productions that add to the state's diversity of employment and business. **Senator Broadsword** said the way she reads this bill, there is no funding. This is a spot in the budget that can be filled at the discretion of JFAC assuming there is money to fill it at some future date. **Senator Cameron** stated that **Senator Broadsword** is correct. **Senator Broadsword** asked what happens if we don't have the money to fund the bill, does it languish for lack of funds? **Senator Cameron** said he views this bill as an opportunity if we have the money. We put it into the budget and if for some reason the resources are not there, it is just lost opportunity. **Representative Anderson** said there is an after market after a film is produced in a state. Idaho actually has a film history. One of the original silent movies was made at Priest Lake entitled "Grub Stake". There is a real tourist industry that spun off out of that event that happened over three winters back in the 1920's. This may be a bit peculiar in the idea of funding in some ways but it is not much different than generation projects and industry to Idaho. We give incentives for wind production or geothermal and we give advantages because those industries could build plants in other states.

Chairman Andreason stated that he understands that the bill does not request an amount of money. If the industry comes into the state and spends money, we give them a 20% break on monies spent.

MOTION:

Senator Broadsword moved to send H592 to the floor with a do pass recommendation. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**. **Senator Stegner** voted nay.

Senator Broadsword stated what **Senator Stegner** has said is true but this is clean money. When they come they don't put their children in our school and they don't use our services other than the short time that they are filming. These are funds that we would not have gotten if we did not have the opportunity to put the mechanism in place for possible future business.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

H585

Relating to a Disclosure Form for the Sale of Real Property

Representative Killen said this bill is an implementation of one of the recommendations originating with the Interim Joint Land-Use Study Group. Idaho has had on the books since 1994 what is commonly referred to as the Residential Property Disclosure Form. Certain minimum information must be provided when a residential property is sold. Certain information on all homes has to be provided and certain information that only brand new construction has to apply. This item deals with the status of the property or the potential status of the property in respect to annexation. The first three questions on the form deals with whether the property is in or out of the city limits, or adjacent to the city limits, whether it does receive city services and if there has been any written consent to annex recorded. Under the existing annexation law that is one of the variables that comes into play to determine whether you can successfully carry out an annexation. All this bill proposes is to make those three disclosures that would appear on the form in larger font and boldface type. Testimony at the committee indicated that a number of property owners were unaware when they purchased property what their exposure was in this regards. This would draw the purchaser's attention to potential exposure in these matters. The rationale was that informed decisions generally lead to better decisions.

Senator Davis said he wanted to know who the Interim Joint Land-Use Study Group was and how it was created. **Representative Killen** said it was established by a Senate concurrent resolution. Senators Fulcher, and Bastian, Representatives Bayer, Killen, and Clark served on the study group. **Senator Bilyeu** asked when is this form used? **Representative Killen** said at the time earnest money on the purchase is executed, the form must be provided.

Senator Goedde moved to send H585 to the floor with a do pass recommendation. The motion was seconded by **Senator Werk**.

Senator Davis stated that he thought the disclosures were more of a Treasure Valley problem but the impact of this legislation will be to make all the realtors on my side of the state, who have spent several thousands of dollars on forms, they will have to throw them away and start all over. **Senator Davis** said there has been an ongoing battle on annexation in the Treasure Valley. They hate what the City of Boise and other communities have done in annexing their area. They don't like being co-oped and told that now their property taxes will be different. In this bill they only want the parts on annexation to be in larger font and bold. The Treasure Valley is telling realtors across the state, tear up your forms and print the bold, larger font annexation piece in your selling documents. **Senator Werk** said he believed this is pertinent to highlight in the contracts. **Senator Davis** said why is it that we are going to highlight Lines 1-3, line 5 have more impact statewide

than annexation statewide. **Senator Goedde** said he agrees with **Senator Davis** that there are bigger issues in these contracts than just annexation and withdraws his motion. **Chairman Andreason** asked with the consent of your second?

**SUBSTITUTE
MOTION:**

Senator Davis moved to hold H585 in Committee. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**. **Senator Werk** voted nay.

Senator Werk said he could understand some angst about not everything in the document being bolded or large font or there being thousands of forms on some realtors' shelves. The Legislature constituted this Interim Joint Land-Use Study Group to address a particular problem and they brought legislation from the committee to address the problem that they were assigned to address. If there should be other language in this form that should be larger or bolded it could be addressed in other legislation. We should respect the work that they have done. **Senator Davis** stated it was an Ad Hock Committee. The speaker and the pro-tem did agree and allow the committee to form. If every time an interim committee or a task force makes recommendations that you are prepared personally to support that legislation on the floor and in committee, he will withdraw his motion. **Senator Bilyeu** asked was this the only item the committee addressed was this form? **Representative Killen** said no there were a variety of recommendations. This was clearly the least significant. **Senator Bilyeu** asked what was the problem that the committee was put together to solve? **Representative Killen** said there were several individuals that spoke to their dismay of having purchased property and then a year or so later receive a notice that their property was being annexed into Meridian or Boise because they had been provided city services prior to them becoming an owner. This legislation was to draw attention of perspective buyers that there may be annexation issues with the property.

Chairman Andreason welcomed **Michael Larson, Bureau Chief, Idaho Department of Finance**, to the Committee to present H451.

H451

Relating to the Idaho Collection Agency Act

Michael Larson stated the primary objective of H451 was to create more uniformity in the licensing and regulatory processes for all collection agencies that wish to do business in Idaho. Currently collection agencies are required to have an in-state office and that requirement would be changed. Under existing law we have two types of businesses. Collection agencies that have an in-state location. Then foreign permitters, who are not required to have an in-state location or presence. The law has treated these two types of entities differently which over the years has resulted in a competitive disadvantage to our in-state collection agency businesses. With the changes we are proposing we are trying to rectify the situation in different areas.

There is opposition to this bill by the National Foundation of Credit Counselors. The only area that we are aware of is the Department's proposal to change the requirement that a credit or debt counselor be a

501C3 non-profit organization and that is the state of the law today. In order to do credit or debt counseling in Idaho you must be a non-profit organization. Interacting with other Departments of Finance in other states we have learned that there is a trend against that particular status. From the Department's perspective we no longer see a compelling interest to limit the services to Idaho consumers by just companies that qualify for 501C3 organizations.

Senator Davis asked right now the state has a 501C3 requirement and nationally it appears to the Department of Finance that the trend is going in an alternative direction so you are proposing that the State of Idaho be consistent with the trend nationally? **Mr. Larsen** replied it is not that Idaho just wants to follow the trend. Our observation is that there appears to be no remaining justification to limit these services by only those companies with the 501C3 organizations. We believe in opening the area of debt and credit counseling up to for profit businesses. We regulate many businesses that provide good and valuable services that are for profit businesses. Currently we also regulate non-profit organizations. We see no value in continuing the status quo in Idaho when consumers would have greater choices if for profit businesses are able to offer these services. We see benefits of allowing the marketplace to work in this area with competition. The Idaho Collection Agency Act establishes the standards and requirements of the law and we have compliance examiners that go out and conduct examinations to assure that our licensees are complying with the law.

Senator Davis asked is it correct to assume that this is where the United States is heading nationally to allow the for profit debt and credit counseling. **Mr. Larsen** answered yes that is correct. **Senator Davis** asked might *Title 11 of the Bankruptcy Code* as requirements now for counseling both before and at the end of a bankruptcy? Does it require that they be not for profit or does it provide limitations? **Mr. Larsen** said there are those with greater knowledge than him on this but it is his understanding that those counseling services can be offered by either non-profit or for profit companies. **Senator Cameron** said he continually hears stories about for profit credit counseling entities who nationally are preying on individuals who are in trouble and their counseling less than ethical. They take the consumers credit card debt and roll it over into their mortgage and then the consumers end up using their credit cards and now have a second mortgage. In most cases not the best solution for the consumers. How does this bill give the Department a better control over these predatory companies? It would seem to him the for profit companies motives might not be as pure as the non-profit. **Mr. Larsen** said we believe that there is significant amount of for profit credit counseling right now in this state and delivered over the internet or the radio. There are abuses in this industry. It is a challenge for the Department of Finance with our limited staff and we regulate the mortgage industry, collection industry, escrow and consumer lenders and we have a lot on our plate and we try to stop abuses. Requiring companies to obtain a license and adhere to requirements to retain the license and be subject to a statute that has

prohibited practices at the risk of losing that license or having it suspended or revoked is a powerful tool. This type of regulatory structure helps the Department. **Senator Cameron** said based on the way our current law is drafted, since there is no requirement for licensure and no exclusion for profit counselors, they are existing in our state now without regulation. Is that a correct interpretation? **Mr. Larsen** answered yes but let me add to that the for profit do not have a license but they cannot get one because they are not a 501C3. **Senator Werk** said that it seems that in the past, debt and credit counselors were not lumped together. What is the difference between them? **Mr. Larsen** answered there are a variety of models in this area and under existing law the Departments interpretation to give credit counseling the company has to be non-profit. A business may offer counseling services, education services to a debtor and accept funds from that debtor to prorate to that debtor's creditors holding those funds in trust. We have regulated those types of entities under current law. These types of entities can be for profit or non-profit. In their model of conducting business they do not receive funds from debtors for disbursement to creditors and fall under the definition of credit counselors. Those entities under existing law are required to have that 501C3 status. We have a representative here today from one of Idaho's largest business in the area of debt reduction services. Their model is that not only do they provide counseling and education but provide a service whereby they would receive funds for disbursement to creditors and negotiate the amounts of those debts with those various creditors.

Senator Werk stated if a company is doing credit counseling by providing advice and support in setting up payment schedules and budgeting to help individuals dig out from being in debt. When the individual steps over the line into debt counseling, you tell them pay me a specified dollar amount a month that we will apply to your debt and paying those debts off. He asked if he understood the distinction between the two services? **Mr. Larsen** said yes that is correct. The Department's proposal is to improve the state law because in the marketplace there is virtually no difference that is why we have proposed to define debt and credit counseling in the same paragraph. They engage in the same types of activities. **Senator Werk** said he has a concern for the protection of the consumer that would go into a for profit debt counseling service versus a non-profit debt counseling service that the for profit business model might not serve the best interest of that consumer because they need to make a profit off of the service. **Mr. Larsen** stated that it has been the Department's experience both non-profit and for profit can provide excellent service. He believes there is some misconception that the not for profit status translates that a debtor would be able to get services for free from this company. Non-profit and for profit debt counseling provides counseling and educational services and they charge for these services.

MOTION:

Senator Davis moved to send H451 to the floor with a do pass recommendation. The motion was seconded by **Senator Goedde**. The motion carried by **Voice Vote**.

Relating to Professional Engineers and Professional Land Surveyors, David Curtis, Executive Director, Idaho Board of Engineers and Land Surveyors

David Curtis said the Board has reviewed their licensing laws to assure that they are current and appropriate for the practice that they regulate. The Board has not looked at their licensing laws for approximately 20 years on the law that regulates the practice of engineering and land surveying. We have compared the Idaho Code to the model law that is prepared by a national organization to which we belong. The legislation contained in H380 is a result of the efforts to modernization of the law that only minor modifications will be required in the future years. The bill has been amended twice in the House: 1) Amendment clarified issues related to a professional land surveyors need to access land survey monuments not on property owned by the client, 2) Amendment retained the minimum monument size in current law and eliminated the need to place medal caps on all monuments which had been required in the original version.

Senator Davis said for the last several years the statutory right of access to property has been an area of concern to this Legislature, is there any of this language in this bill? **Mr. Curtis** answered yes there is on page 22, line 21, states "a professional land surveyor licensed pursuant to the provisions of this chapter, and his subordinates, who, in the course of work which may be necessary to carry out the objects of existing laws relative to surveys, find it necessary to go upon or across the lands of a party or parties other than the one for whom the survey is being made, and upon or across such land lie land survey corners or monuments, the access to which is necessary to complete a survey, shall not be guilty of trespass but shall be liable for any damage done to such land or property, provided the following actions are taken: (a) If oral permission cannot be obtained from the owner of the property, then the person making the survey shall give written notice via United States post office certified mailing, return receipt requested, of the survey to the owner of the land at least ten (10) days before going upon or across the land/ and (b) Upon receipt of delivery confirmation, or after ten (10) days following the date of mailing of the written notice, whichever is sooner, the surveyor and his subordinates may enter upon the land."

Senator Davis said for clarity help me with the following example: a surveyor sends out notice to me on day one and on day 11, we have a wedding planned on my property and your crew can come on my property if we have not contacted you on that 11th day and interrupt the wedding. **Mr. Curtis** replied that could be a possibility. **Senator Bilyeu** asked could you repeat what you did last year? **Mr. Curtis** answered last year there was a right of entry clause which imposed very little duty on surveyors. A surveyor would not have been required to post a certified return receipt request notice. It simply required that they make a reasonable effort to contact the property owner of whose land they needed assess. This section was amended out in the Senate and House concurred on that amendment. The legislation which we had last year did not contain the objectionable portions that this Committee had objected to in the past. Without access to the survey monuments some individual's boundaries cannot be established. The surveyor must have

that access. **Senator Davis** said he thought he could fix this bill under subpart B “may enter upon the land” you add the following “unless the land owner expressly denies access to the property”. If you show up at my door on day 11 (wedding day) he has the right to say no you cannot enter upon my land. If the property is empty and the surveyor has given me proper notice then he would not have a problem. **Mr. Curtis** said the intent of this and probably of any surveyor is not to disrupt a family gathering. It would be to access land survey monuments which they must access in order to establish boundaries for the adjoiners. **Mr. Curtis** said there are circumstances where a property owner who wishes to prevent someone from entering their land will preclude a survey from being performed. If the existing property owner owns on both sides then they still could prevent the survey. **Senator Broadsword** asked if there is anything in this legislation that if it fails, your group would be harmed? **Mr. Curtis** answered it is a bill that we have been working on for two years. There are some major issues in the bill relating to mobility to those who are licensed in other jurisdictions. There is terminology language if it does not go forward could harm our business. **Mr. Curtis** stated that those individuals employed by the Bureau of Land Management and the Department of Interior have the right to go on anyone’s property by Idaho Law with no notification whatsoever. All this section of our bill extension is you won’t be found guilty of trespassing privilege to surveyors who are in private practice. He believes there is a statute that exempts state employees performing surveys from trespass if they go onto property with no notification. **Senator Davis** said this would provide an open ended avenue for an individual who decides to come back later having given the notice and participate in criminal mischievous. This survey should have a narrow window of time such as you give a notice within 10 days they have complete access to the monument within 30 days thereafter, and after that time period you have to send another notice.

MOTION: **Senator Davis** moved to refer H380 to the 14th Order of Business for amendment. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

MOTION; **Senator Broadsword** moved to approve the minutes of March 4, 2008. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

ADJOURNMENT: **Chairman Andreason** adjourned the meeting at 3:16 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary

MINUTES

SENATE COMMERCE AND HUMAN RESOURCES COMMITTEE

DATE: March 25, 2008

TIME: 1:30 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Andreason, Vice Chairman Coiner, Senators Cameron, Stegner, Davis, Goedde, Broadsword, Werk and Bilyeu

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Andreason** called the meeting to order at 1:34 p.m.

MINUTES:

MOTION: **Senator Werk** moved to approve the minutes of March 6, 2008. The motion was seconded by **Vice Chairman Coiner**. The motion carried by **Voice Vote**.

MOTION: **Senator Broadsword** moved to approve the minutes of March 13 and 18, 2008. The motion was seconded by **Senator Bilyeu**. The motion carried by **Voice Vote**.

H494 **Relating to Insurance and Investments**
Michael Kane, representing **Idaho Counties Risk Management Program, (ICRMP)**, is a domestic reciprocal insurer that is regulated by the Department of Insurance and it is made up entirely of governmental entities as a self-insurance pool. There are over 650 public entities that have joined together to insure public entities such as cities, counties, highway districts, school districts and community colleges to insure for property and casualty. ICRMP retains a \$100,000 layer on its property insurance and \$500,000 on its casualty insurance. ICRMP's assets are \$35 million dollars. The bill before you today will allow ICRMP to invest their assets as any other insurer does and it is regulated by the Department of Insurance. At present, by law, we can only invest our monies in bonds and that is poor stewardship of the funds we are charged to invest. We have given a Department of Insurance Investment Limitations (see supporting documents) handout to each of the Senators. The handouts show the types of investments they can invest in and investments they are not allowed to invest in along with the amount and percentage of assets that we are allowed to place the

money in. One of the cardinal rules is diversification and that is required and we adhere to these guidelines. We are asking to be able to diversify.

Mr. Kane introduced **Rick Ferguson who is the Director of the Idaho Counties Risk Management Program** to present more of the details of the legislation before you today. **Mr. Ferguson** stated that ICRMP was formed in 1985 out of necessity. The commercial insurance markets left Idaho's public entities because of litigation and at that time commercial insurance providers were having some large verdicts set against them around the country. As a result, the counties could not find insurance so they pooled their money with other municipalities and they paid the claims out of the pool. ICRMP became very successful and so they formed a joint powers authority called ICRMP and we exist today as both an insurance company regulated by the Department of Insurance and as a public entity. We live under both sets of rules and as a public entity we are restricted from investing in equities or options that may be available to any other insurance company in the State of Idaho. Our mission as a public entity is unique. We take in money, hold it and then it pays out claims. Those claims can take years to develop, civil rights litigation, auto accidents which might not come to conclusion for three or four years. When we were a smaller program our investment strategy was not as important because there was not as many funds under investments. As our state has grown so has our asset base. Our stewardship of that \$35 million has become critical to our operation. Another part of our mission is to provide stable insurance rates for our public entities around Idaho.

Senator Broadword said with an anticipated higher return for your asset investments, do you anticipate a reduction in what the cities and counties would pay to participate in ICRMP. **Mr. Ferguson** said he did not anticipate a reduction in premiums. Our primary objection is to diversify that portfolio so that we will not see the ups and downs. In 2005 we saw a return of less than 2% on the investment portfolio. Our primary goal is stabilization and not an increase in return. We will not be able to invest in a portfolio that is real high risk; we would be penalized for taking on very much risk. We would hope that the diversification would help us stabilize our rates so that we do not have to have large increases in premium rates to diminish their ability to do other things than buy insurance. **Senator Werk** asked what he anticipates that ICRMP is attempting to do is take themselves out of very safe investments and get into much more volatile areas of investing. How do you stabilize rates by taking on more risk in your portfolio? **Mr. Ferguson** answered of the \$34 million we currently have under investment, \$30 million of that is in "A" rated bond portfolio. We are subject to the bond market so significant drops in the bond market reduces our earnings. 16% of our portfolio is in either cash or the building that we operate in. We have no exposure to the equities market. The regulations that we operate under will severely penalize us if we were to take on significantly more risk and if we were to expose our portfolio to a disproportionate amount of equities. Even in a more conservative environment, for example, PERSi's exposures even in their most conservative invest portfolio has some exposures to

equities so that as the portfolio moves through the bond and equity market cycles there is stability. The idea is to diversify in a limited way under the regulatory environment we live under. **Senator Werk** said my concern is that you might end up with a substantial loss because you represent cities and counties, how would that impact your customers and subsequently the citizens that pay the bill? **Mr. Ferguson** said if we do not meet our fiduciary duties and we are not able to provide a stable market environment to the public entities of Idaho, the commercial markets would be available to them. Public entities are not required to join our program. It would not be good for these public entities of our state to have our program fail, however, the Department of Insurance regulatory environment is built to prevent that from happening and that is the purpose of regulation.

Senator Bilyeu asked who is your portfolio manager? **Mr. Ferguson** replied Scott Brassey of Burrows and Hutchinson has been our portfolio manager for a considerable period of time. **Senator Cameron** asked help me understand that ICRMP will still maintain the necessary reserve requirements than any other insurance company. **Mr. Ferguson** stated that under the Department of Insurance there is a minimum surplus requirement that we must have on hand which is \$2 million. Our current surplus is running at about \$14 million. **Senator Cameron** asked since ICRMP mostly provides coverage to counties and cities and if you had more aggressive investment strategies you might end up losing that \$16 million and then would insurance rates go up to cities and counties and would the taxpayers through property taxes be asked to pay more for the insurance coverage? **Mr. Ferguson** said an investment strategy that the regulatory environment allowed to take place which allowed us to lose our surplus then you would have a vacuum in the State of Idaho. Commercial insurers may attempt to fill that vacuum, we were created when the commercial insurers left us a vacuum that we had to solve. If indeed the regulatory environment would allow our portfolio to drop, he would argue the regulatory on investments for insurance companies nationally. The risks that he is concerned about is the risks they face every day underwriting county jail operations, city police operations, and evolving ninth circuit federal civil rights laws. That creates the exposure for our program that demands we maintain our surplus and maintain that \$34 million under an investment strategy which performs in a stable environment.

Senator Cameron said under the current regulatory environment we do see even traditional insurance companies who fail, not because of underwriting but in some cases because of poor investment decisions. With ICRMP there is a little more at risk than a traditional company failing. What is ICRMP going to do beyond the regulatory environment to insure that our cities, counties and taxpayers are protected? **Mr. Ferguson** said ICRMP's governance is through its members and it's members elect representatives and we have a nine member board. You have locally elected officials who are chosen by their peers. They bring to governance a conservative approach. The 660 members chose 9 members to represent them and through the 24 years of operation we have been able to pick up the best of the best to oversee us. **Senator**

Cameron stated what he was hoping to hear you say was in the lines of what kinds of strategies you or ICRMP would employ in order to make sure that the investments you choose are safe and sound. The State Insurance Fund does not invest its own money. They rely on the Endowment Fund Investment Board, which is a state run board to arbitrarily help them make investment decisions. What is the procedure that you would use to choose where your money was going to be invested and how you would protect the counties and cities in that direction? **Mr. Ferguson** replied they take the model investment strategy and work with Burrows and Hutchinson to establish a portfolio strategy that first met the Department of Insurance regulations. Secondly, a plan similar to our peers following some of their risk based analysis and how they have applied it to their investment strategy. Then have Burrows and Hutchinson utilize their own in-house assessments to determine what is an appropriate level of risk considering the liability regulations and board interest. **Senator Stegner** asked did the Legislature in the last five years change the percentage of reserves that ICRMP could maintain in buildings? **Mr. Ferguson** said that was correct. Around the year 2000 the ICRMP program sought Legislative assistance in changing and allowing them to use their building to be a higher percentage of surplus requirement, our surplus at that time was \$2 million.

Mr. Kane clarified that the issue with ICRMP in 2000, *Section 41-728, Idaho Code*, their building was too much of a percentage as against our assets, which was in violation of insurance rules and we had to work together to solve that problem over a three year window so that no more than 15% of our building could be our total asset base. Right now the building is approximately 8% of our asset base. **Senator Stegner** said what does the statute allow now in terms of the condition of that variance. **Mr. Kane** stated *Section 41-728, Idaho Code, sub 2, sub b*, gave us a three year window, 25% of the years July 1, 2001 - 2003, 20% July 1, 2003 - 2004 and finally 15% by July 1, 2004. What the law currently says is that no more than 15% of current asset base can be in a building. **Senator Stegner** said prior to that you were under the general insurance investment of 10%. **Mr. Kane** replied the Department of Insurance had the authority to give a variance to that and they had given the variance for numerous years before 2000. **Senator Stegner** asked if you really aren't using that portion of the law, would you have objection to moving that to code? **Mr. Kane** answered there is no reason that he can think of why that currently exists. Actually the 15% lower than what prime insurers get, they are up around 20%. **Senator Stegner** said it says 10% for home offices, 20% of all categories. **Senator Stegner** said he thought it would be prudent for us to ask in the future so ICRMP does not end up jeopardizing the amounts of monies and the traditional amounts that follow these categories by having an over investment in a new high rise in Boise for ICRMP. **Mr. Ferguson** stated that they would agree to that and we will carry the bill next session.

MOTION:

Senator Goedde moved to send H494 to the floor with a do pass recommendation. **Senator Goedde** disclosed that he does represent ICRMP in some of his business practices. He uses them to insure public

entities and he does not see it as a conflict with him presenting the motion. The motion was seconded by **Senator Werk**. The motion carried by **Voice Vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

H620

Relating to the State Fire Marshal

Representative Lawrence Denny stated this piece of legislation before you does not accomplish the uniformity that he was looking for initially but it does set-up some parameters that will eventually get to the uniformity of enforcement. It does set-up training standards for all assistant state fire marshals. Every fire chief in the state is an assistant fire marshal, but the state fire marshal has no control over the actions of any of these fire chiefs. The bill institutes a local appeals process. Currently if you have a grievance the only appeal you have is to your local fire commission which would be the body that set the policy and will be the same body that you take your appeal to.

Gary Rohwer, Fire Commissioner Parma Rural Fire District and President of Idaho Fire Commissioner's Association, said this piece of legislation before you is a first step to solving problems that have been in a grey area for quite some time. The concept of uniform fire code enforcement is the direction that our organization is heading. Because of the type of state we have there are extreme differences between rural fire districts and a rural fire district that is in a well populated area. The International Fire Code as it is drawn up takes these differences into account. The fire marshal has been providing training for his assistant fire chiefs and fire control officials of districts. The standardized training will allow for better trained and qualified individuals in communities enforcing the code.

Senator Davis asked on page 1 of the bill, the very last line says "shall apply a reasonable interpretation" reasonable applying to the circumstances, if so, then reasonable will not be uniform. How long will it be before the state can strike the word reasonable and insert the word uniform into this bill? **Mr. Mark Larson, State Fire Marshal**, stated that is a good question. He too, does not have a definition for reasonable. It was their intent to take steps to bring about the opportunity under the bill to use uniform. One of our duties is to enforce and interpret the code and then to maintain records so if asked questions on the decision, how he interpreted the code in the specific situation and how it was applied. **Senator Davis** said, for example, he is in an appeal situation with the fire district and he does not like their decision, what is on appeal, the correct interpretation of the code or whether your interpretation was reasonable. If it is the latter then a homeowner will have a heavy burden on appeal then just what does the International Fire Code provide. He worries that this gives **Mr. Larson** a great deal of power and take us in the opposite direction of where we intend to go with this bill. **Mr. Larson** said the legislation that establishes my office and my role establishes the local fire authorities as my assistants in carrying out the provision of the

code. Another section states that my office cannot interfere with the operations of any fire jurisdiction unless we are asked to intervene. This legislation requires the setting up of a local appeal process and then either party can appeal the decision within a certain time frame to my office for consideration and then the next step would be the district court. **Senator Davis** said if you are on appeal and you think the code says the driveway has to be 15 feet and the fire marshal says the driveway has to be 20 feet the issue before the court may not be whether it is 15 or 20 feet. The question may be that the fire marshal of finders of fact abused their discretion in determining whether it was 15 or 20 feet. If they cannot demonstrate that they abused their discretion, then that may be more of a problem. He believes that ultimately the bill will need to be amended.

MOTION:

Senator Davis moved to send H620 to the floor with a do pass recommendation. The motion was seconded by **Senator Cameron**. The motion carried by **Voice Vote**.

Senator Werk said the statement of purpose attached to this bill does not adequately describe the bill. This statement of purpose does not describe what the bill does and did not even make an attempt to describe the bill. He looks at the statement of purpose as the first blush as to what a bill does.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Chairman Andreason commended Madisen Holbrook and presented her with letters of recommendation and a gift of thanks. Madisen said thank you all for the opportunity to serve as your page and she never thought she would know so much about insurance.

ADJOURNMENT: **Chairman Andreason** adjourned the meeting at 2:23 p.m.

Senator John Andreason
Chairman

Carol Deis
Secretary